TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]. 1914

No. [redacted] 107

SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE RAILROAD COMMISSION OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED JANUARY 24, 1915.

(23,520)

(23,520)

UPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 440.

UTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE RAILROAD COMMISSION OF INDIANA.

N ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 20, 1914.

1 STATE OF INDIANA:

In the Appellate Court.

Be it remembered that heretofore to-wit: On the 24th day of January, 1911, the same being the 50th Judicial Day of the November Term, 1910, of said Appellate Court, the Southern Railway, by its Attorneys, Alex P. Humphrey, Edwin P. Humphrey and John D. Welman, filed in the Office of the Clerk of the Supreme and Ex-officio Clerk of the Appellate Court of said State of Indiana, a transcript of the record and proceedings had in the Vanderburg Superior Court of said State of Indiana in a cause wherein the Southern Railway Company was the Appellant, and the Railroad Commission of Indiana, was the Appellee, together with an assignment of errors, in term and bond by Appellant, in the words and figures following, to-wit: (H. I.).

2 *Placita.*

Pleas begun and held at the Court House in the city of Evansville, County of Vanderburg and State of Indiana, on Monday the 7th day of March, 1910, when present the Honorable Alexander Gilchrist, Judge of the Superior Court of Vanderburg County, Indiana, Guild C. Foster, Clerk of the Superior Court and William E. Barnes, Sheriff of Vanderburg County, at which term of said Superior Court so begun and held, the following proceedings among others were held:

3 STATE OF INDIANA,
Vanderburg County, ss:

In the Superior Court of Vanderburg County, March Term, 1910.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

TRANSCRIPT ON APPEAL.

Filing of Complaint.

Be it remembered, That on the 12th day of March, 1910, the plaintiff by its attorneys Messrs. Spencer, Brill and Hatfield, filed in the office of the Clerk of the Superior Court of Vanderburg County a complaint which is in the words and figures following, to-wit:

4 STATE OF INDIANA,
Vanderburg County, ss:

In the Superior Court of Vanderburg County, March Term, 1910.

#14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Complaint.

The plaintiff complaining of the defendant says that the defendant is and was at all times herein referred to a corporation and a common carrier engaged in moving traffic by railroad between points within the State of Indiana.

That as such common carrier the defendant on the 24th day of February, 1910, and for a long time prior and subsequent thereto, owned, used and operated between said points locomotives and cars.

That on the 24th day of February, 1910, on and over the tracks owned or in the operation or control of the defendant company said defendant had and hauled its said locomotives and cars and among said cars owned or operated by the defendant company was a car #61264 of the gondola description, being hauled or moved in train #77 by locomotive #641 of said defendant.

That said car #61264 was loaded with coal and billed from Boonville, Indiana, to Milltown, Indiana.

5 That while at Huntingburg, Indiana, a station on the line of said defendant company between said stations of Boonville and Milltown, the defendant company unlawfully permitted said car to be hauled or used on its said line said car not being then provided with secure grab-irons or hand-holds on the sides or ends of said cars.

That the hand-hold on said car was broken, bent and twisted against the body of the car thereby rendering the same of no use and the same could not be used and was not a grab-iron or hand-hold.

That at said time and place said car was being used in moving state traffic and freight between points in the State of Indiana.

That by reason of the aforesaid the defendant is liable to a penalty for the use of the State of Indiana in the sum of One Hundred Dollars ($100.00) to be recovered herein.

Wherefore the plaintiff prays judgment for the recovery of said penalty and for all other and proper relief.

(Signed) SPENCER, BRILL & HATFIELD,
Attorneys for Plaintiff.

Said complaint was endorsed with reference to the issuance of a summons as follows, to-wit:

Appearance Day.

The plaintiff hereby fixes the 26th day of March, 1910, for the defendant to appear and answer this complaint and the Clerk will please issue summons returnable on that date and oblige.

(Signed) SPENCER, BRILL & HATFIELD,
Attorneys for Plaintiff.

6 Said summons, together with the Sheriff's return thereon, is in the words and figures following, to-wit:

Summons.

STATE OF INDIANA,
Vanderburg County, ss:

The State of Indiana to the Sheriff of Vanderburg County, Greeting:

You are hereby commanded to summon Southern Railway Company to appear in the Superior Court of Vanderburg county, before the Judge thereof, on the 26th day of March, 1910, at the Superior Court Room in Evansville, to answer the complaint of Railroad Commission of Indiana. And of this writ make due return.

Witness, the Clerk of said Court and the seal thereof hereunto affixed at Evansville, this 12th day of March 1910.

[SEAL.] (Signed) GUILD C. FOSTER, *Clerk.*

Service.

Endorsed as follows:

Came to hand March 12th 1910.

Served the within named Southern Railway Company by reading this summons to and within the hearing of Edward Stratton Com'l Ag't of the same and by delivering to him a true copy of the same he being the highest and only officer of the same that could be found in my bailiwick. Served March 12th 1910

(Signed) WILLIAM E. BARNES, *S. V. C.*
ALBERT HEBERER, *D. S.*

Fees 95¢.

7 Be it further remembered, That on the 28th day of March, 1910, the same being 17th Judicial Day of the March Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Appearance.

Comes now John D. Welman and enters his appearance for the defendant herein.

Rule to Answer.

And comes now the plaintiff by counsel and on motion of plaintiff it is ordered by the Court that the defendant file its answer to the complaint on or before Thursday April 7th. 1910.

8 Be it further Remembered, That afterward on the 16th day of April, 1910, the same being the 34th Judicial Day of the March Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said Court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Motion to Make Complaint More Specific Filed.

Comes now the defendant by Counsel and files its motion to require plaintiff to make its complaint more specific. And comes the parties by counsel and the court being fully advised in the premises now overrules defendant's motion to require plaintiff to make its complaint more specific to which ruling of the court the defendant excepts.

Said motion above mentioned is in the words and figures following, to-wit:

STATE OF INDIANA,
County of Vanderburg, ss:

In the Superior Court of Vanderburg County, March Term, 1910.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Motion to Make Complaint Specific.

Comes now the defendant Southern Railway Company
9 and moves the court to require the plaintiff to make its complaint more specific in this:

To state definitely whether this defendant, in addition to being a common carrier engaged in moving traffic by railroad between points in the State of Indiana, is also a common carrier of interstate traffic and is engaged in interstate commerce by railroad.

(Signed) JOHN D. WELMAN,
Attorney for Defendant.

10 Be it further remembered, That afterward on the 19th day of April, 1910, the same being the 36th Judicial Day of the March Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said Court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Filing Demurrer to Complaint.

Comes now the defendant by counsel and files its demurrer to the complaint herein.

Said demurrer is in the words and figures following, to-wit:

STATE OF INDIANA,
County of Vanderburg, ss:

In the Superior Court of Vanderburg County, March Term, 1910.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Demurrer.

The defendant demurs to the plaintiff's complaint herein for each of the following reasons:

1. That this court has no jurisdiction over the subject of the action alleged in the complaint.

2. That said complaint does not state facts sufficient to constitute a cause of action.

(Signed) JOHN D. WELMAN,
Attorney for Defendant.

11 Be it further remembered, That afterward on the 24th day of June, 1910, the same being the 17th Judicial Day of the June Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILROAD COMPANY.

Overruling Demurrer. Exceptions.

Come again the parties and the Court being sufficiently advis now overrules defendant's demurrer to complaint as follows: T court overrules paragraph one of said demurrer questioning t jurisdiction of the court to which ruling and decision of the cou the defendant excepted. The court overrules paragraph two said demurrer that facts sufficient to constitute a cause of action n stated to which ruling and decision of the Court the defendant e cepted. And now on motion of plaintiff it is ordered by the cou that the defendant file its answer to the complaint on or before Mo day September 5th, 1910.

12 Be it further remembered, That afterward on the 6th d of September, 1910, the same being the 2nd Judicial Day the September Term, 1910, of the Superior Court of Vanderbu County, the following further proceedings were had in said ca by said court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Rule to Answer.

Come now the parties by counsel and now the rule to ans heretofore taken is extended to Friday, September 16th, 1910.

13 Be it further remembered, That afterward on the 1 day of September, 1910, the same being the 12th Judic Day of the September Term, 1910, of the Superior Court of Vand burg County, the following further proceedings were had in s cause by said court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Answer Filed.

Comes now the defendant by counsel and files its answer to complaint herein.

Said answer is in the words and figures following, to-wit:

STATE OF INDIANA,
County of Vanderburg, ss:

In the Superior Court of Vanderburg County, March Term, 1910.

14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Answer.

The defendant Southern Railway Company, for answer to plaintiff's complaint herein, says:

That at the time of the things complained of in plaintiff's complaint, towit, on the 24th day of February, 1910, it was and now is a corporation organized and existing under and by virtue of the laws of the State of Virginia, and is a railroad company engaged in the operation of a railroad and the carrying of passengers
14 and freight for hire; that it was and is engaged in interstate commerce between states of the United States, and has railroad tracks and is operating a railroad as a common carrier in ten states and in the District of Columbia, and is engaged in interstate commerce in the State of Indiana, and was at said time. That all its locomotives and cars, including the car mentioned in plaintiff's complaint, were frequently and commonly used and engaged in the interstate traffic. That at said time, to-wit, the 24th day of February, 1910, said car No. 61264 mentioned in plaintiff's complaint was loaded with coal and was consigned to and from points within the State of Indiana; that said car was in train No. 77, and that said train No. 77 was at said time engaged in hauling interstate traffic; that said train No. 77 originated to-wit in the State of Illinois, and passed through and into the State of Indiana and various other states; that said car was a part of said train No. 77 and that said train No. 77 contained twenty cars, and all the other cars of said train and the train crew were at said time being used by the defendant in interstate commerce between the states, and that said other cars were consigned from one of the states to, into and through another state.

That on said day, to-wit, on the 24th day of February, 1910, there were in full force and effect statutes of the United States for the purpose of regulating and controlling the equipment of cars and engines used by railroads and common carriers engaged
15 in interstate commerce, including automatic couplers, grab-irons, etc., commonly called the "Safety Appliance Acts", of March 2, 1893, Chapter 196, 27 Stat. 531 (U. S. Comp. 1901, p. 3174), as amended April 1, 1896, Chap. 87, 29 Stat. 85, and March 2, 1903, Chap. 976, 32 Stat. 943 (U. S. Comp. St. Supp. 1909, p. 1143), a copy of which acts are made a part of this answer

of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Approved March 2, 1893, 27 U. S. Stat. at Large, 531, ch. 196.

An act to amend an act entitled, "An act to promote the safety of employés and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six. (Public No. 133, approved March 2, 1903.)

SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions and requirements of the Act entitled "An Act to promote the safety of employés and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip
20 their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes, and for other purposes," approved March second eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six, shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type, and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab-irons, and the heighth of draw bars, shall be held to apply to all trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said Act of March second, eighteen hundred and ninety-three, as amended by the Act of April first, eighteen hundred and ninety-six, or which are used upon street railways.

SEC. 2. That whenever, as provided in said act, any train is operated with power or train brakes, not less than fifty percentum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power braked cars in such train which are associated together
21 with said fifty percentum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said Act the Interstate Commerce Commission may, from time to time, after full hearing increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

SEC. 3. That the provisions of this Act shall not take effect until

September first, nineteen hundred and three. Nothing in this Act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States District Attorney from any of the provisions, powers, duties, liabilities, or requirements of said Act of March second, eighteen hundred and ninety-three, as amended by the Act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements and liabilities of said Act of March second, eighteen hundred and ninety-three, as amended by the Act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this Act, apply to this Act.

22 Be it further remembered, That afterward on the 22nd day of September, 1910, the same being the 15th Judicial Day of the September Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said Court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Filing Demurrer to Answer.

Comes now the plaintiff by counsel and files its demurrer to the answer of defendant herein.

Said demurrer is in the words and figures following, to-wit:

STATE OF INDIANA,
County of Vanderburg, ss:

In the Superior Court of Vanderburg County, September Term, 1910.

#14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Demurrer to Answer.

The plaintiff in the above entitled cause demurs to the answer filed herein and for cause of demurrer says that said answer does not state facts sufficient to constitute a cause of defense to plaintiff's complaint.

(Signed) SPENCER, BRILL & HATFIELD,
Att'ys for Pl't'ff.

23 Be it further remembered, That afterward on the 31st day of October, 1910, the same being the 45th Judicial Day of the September Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said Court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Demurrer to Answer Sustained and Exception.

Come now the parties by counsel and the court being sufficiently advised now sustains the plaintiff's demurrer to defendant's answer heretofore filed herein to which ruling and decision of the court the defendant at the time excepts. The defendant is ruled to answer on November 1st, 1910.

24 Be it further remembered, That afterward on the 1st day of November, 1910, the same being the 46th Judicial Day of the September Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said Court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Judgment on Demurrer. Exceptions.

Come now the parties by counsel and this being the day on which defendant herein was ordered and ruled to answer plaintiff's complaint and the defendant failing and refusing to answer or plead further to the complaint, judgment is now rendered by the court in favor of the plaintiff and against the defendant on plaintiff's demurrer to defendant's answer, to which ruling and decision of the court the defendant excepts. It is therefore considered and adjudged by the court that the plaintiff have and recover of said defendant the sum of One Hundred Dollars ($100.00) together with its costs and charges laid out and expended to which ruling of the court the defendant excepts. The defendant prays an appeal to the Appellate Court of Indiana which is hereby granted upon the condition that it file within thirty days bond in the sum of Five Hundred Dollars ($500.00) with the Illinois Surety Company as surety thereon and which bond is hereby approved.

25 Be it further remembered, that afterward on the 28th day of November, 1910, the same being the 66th Judicial Day of the September Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said Court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

And afterwards, towit, on the 28th day of November, 1910, the defendant herein filed its bond which was heretofore approved, and within the time allowed, in words and figures as follows:

Appeal Bond.

Filed Jan. 24, 1911. J. Fred France, Clerk.

Know all men by these presents: That we, the Southern Railway Company, as principal, and the Illinois Surety Company, as surety, are held and firmly bound unto the Railroad Commission of Indiana in the penal sum of Five Hundred Dollars ($500.00), — the payment of which, well and truly to be made and done, we bind ourselves and assigns jointly and severally firmly by these presents.

The condition of the above obligation is such that:

Whereas, heretofore, to-wit, on the 1st day of November, 1910, said Railroad Commission of Indiana in the Superior Court of Vanderburg County recovered a judgment against said Southern Railway Company in the sum of One Hundred Dollars ($100.00) and costs, and the said Southern Railway Company has

26 appealed the same to the Appellate Court of Indiana:

Now, if the said Southern Railway Company shall well and truly prosecute said appeal and abide by the judgment and costs which may be rendered or affirmed against the said Southern Railway Company, then the above obligation shall be null and void, otherwise to be and remain in full force and effect.

In witness whereof we have hereunto set out hands and seals this the 10th day of November, 1910.

SOUTHERN RAILWAY COMPANY,
[SEAL.] By JOHN D. WELMAN, *Attorney in Fact.*
ILLINOIS SURETY COMPANY.
By JOHN D. WELMAN, *Attorney in Fact.*

Approved:

ALEXANDER GILCHRIST,
Judge Superior Court of Vanderburg County.

Filed Jan. 24, 1911. J. Fred France, Clerk.

27 Be it further remembered, that afterward on the 28th day of November, 1910, the same being the 66th Judicial Day of the September Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said Court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Whereas, judgments have been rendered in said court in favor of the Railroad Commission of Indiana in the sum of One Hundred Dollars ($100.00) each in five causes wherein the Railroad Commission of Indiana is plaintiff and Southern Railway Company is defendant, said cases being numbered 14998, 14999, 15000, 15001 and 15002; and

Whereas, the Southern Railway Company has filed its appeal bond in the sum of Five Hundred Dollars ($500) in said Case No. 14998;

Now, therefore it is mutually agreed between the parties hereto that said appeal bond shall be a supersedeas and stay any and all executions on the judgments in said Cases No. 14,999, 15,000, 15,001 and 15,002, as well as in said Case No. 14,998, until final judgment in cause No. 14998 and these cases to abide said appeal.

In Testimony whereof, all the parties hereto have executed this agreement to be made of record, this the 28th day of
28 November, 1910.

RAILROAD COMMISSION OF INDIANA,
By SPENCER, BRILL & HATFIELD,
Its Attorneys.
SOUTHERN RAILWAY COMPANY,
By JOHN D. WELMAN, *Its Attorney.*

29 Be it further remembered, that afterward on the 29th day of November, 1910, the same being the 67th Judicial Day of the September Term, 1910, of the Superior Court of Vanderburg County, the following further proceedings were had in said cause by said Court, to-wit:

No. 14998.

RAILROAD COMMISSION OF INDIANA
vs.
SOUTHERN RAILWAY COMPANY.

Filing Præcipe.

And afterwards, to-wit, on the 29th day of November, 1910, the defendant filed in the office of the Clerk of the Superior Court of Vanderburg County its præcipe for a transcript, for appeal herein, which reads as follows:

Præcipe.

The Clerk of this Court will prepare and certify for the purpose of appeal to the Appellate Court of Indiana, full, true and correct copies of all the papers and entries in said cause.

JOHN D. WELMAN,
Attorney for Defendant.

30 STATE OF INDIANA,
County of Vanderburg, ss:

Clerk's Certificate.

I, Guild C. Foster, Clerk of the Superior Court of Vanderburg County, within and for said County and State, do hereby certify that the above and foregoing transcript contains full, true and correct copies of all papers and entries in said cause required by the above and foregoing præcipe.

Witness my hand and the seal of said Court, at Evansville, Indiana, this 5th day of January, 1911.

[SEAL.] GUILD C. FOSTER,
Clerk of the Superior Court of Vanderburg County.

Filed Jan. 24, 1911. J. Fred France, Clerk.

31 In the Appellate Court of Indiana.

SOUTHERN RAILWAY COMPANY, Appellant,
vs.
RAILROAD COMMISSION OF INDIANA, Appellee.

Assignment of Errors.

The appellant Southern Railway Company says there is manifest error in the proceedings and judgment in this cause in this:

First. That the Superior Court of Vanderburg County erred in overruling appellant's demurrer to the complaint herein.

Second. The Superior Court of Vanderburg County erred in sustaining appellee's demurrer to appellant's answer to the complaint.

Third. The Superior Court of Vanderburg County erred in rendering judgment against the appellant and in favor of the appellee for $100.00 and costs upon appellee's demurrer to appellant's answer to the complaint herein after appellant had been ordered to plead further and refused so to do.

Fourth. The Superior Court of Vanderburg County erred in sustaining appellee's demurrer to appellant's answer to the complaint herein and rendering judgment for $100.00 and costs in favor of the appellee and against the appellant upon said demurrer after appellant had been ordered to plead further and refused so to do.

Fifth. That the subject matter in this cause, as shown by the pleadings, is within the exclusive control and jurisdiction of
32 the United States Courts and the Act of Congress commonly called the Federal Safety Appliance Acts as amended, and the statute of the State of Indiana upon the same subject and in the same language and subsequently enacted, is of no force and effect, and is in violation of the commerce clause of the Constitution of the United States.

Wherefore, for which errors and each of them, appellant prays that the judgment in this cause be reversed.

ALEX. P. HUMPHREY,
EDW. P. HUMPHREY,
JOHN D. WELMAN,
Attorneys for Appellant.

Filed Jan. 24, 1911. J. Fred France, Clerk.

33 And afterwards, to-wit: on the 23rd day of February, 1911, the same being the 76th Judicial Day of the November Term, 1910, of said Appellate Court, the following further pleas and proceedings were had in said cause, to-wit:

Come now the parties by their counsel, and this cause is submitted to the Court for judgment and decree as provided by the Act of the General Assembly of the State of Indiana, approved April 13, 1885, and the rules of said Court adopted in relation thereto.

34 And afterwards, to-wit: on the 19th day of April 1911, the same being the 123rd Judicial Day of the November Term 1910 of said court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files its brief in the words and figures following: (Here Insert.)

And comes now the Appellant by counsel and files its petition for oral argument, in the words and figures following, (Here Insert).

And afterwards, to-wit: on the 17th day of May 1911, the same being the 147th Judicial Day of the November Term 1910, of said Court, the following further pleas and proceedings were had herein:

Comes now the Appellee by counsel and files a petition herein for additional time in which to file brief for Appellee, in the words and figures following: (Here Insert.)

And afterwards, to-wit: on the same day the Court being sufficiently advised in the premises, grants Appellee's petition here for additional time, and said time is granted until July 1, 1911.

And afterwards, to-wit: on the 29th day of June, 1911, the same being the 34th Judicial Day of the May Term, 1911, of said Court, the following further pleas and proceedings were had herein:

Comes now the Appellee by counsel, and files its brief herein in the words and figures following: (Here Insert.)

35 And afterwards, to-wit: on the 22nd day of December, 1911, the same being the 23rd Judicial Day of the November Term, 1911 of said Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files its petition to advance, in the words and figures following: (Here Insert.)

And afterwards, to-wit: on the 2nd day of January, 1912, the same being the 32nd Judicial Day of the November Term 1911, of said Court, the following further pleas and proceedings were had herein:

Come now the parties by counsel, and the Court being advised in the premises, transfers the motion to advance together with said cause to the Supreme Court, for the following reason:

"The question presented in this appeal is that The Indiana act is unconstitutional, invalid and void for the reason that Congress having acted upon said subject the federal act upon that subject is exclusive and the jurisdiction fixed by the federal act is also exclusive; that said question is now engaging the attention of both federal and state courts; that there are other actions of similar nature in the lower courts of this state awaiting the termination of this appeal."

and said cause is docketed in the Supreme Court under number 22140.

And afterwards, to-wit: on the 4th day of January, 1912, the same being the 34th Judicial Day of the November Term 1911, the following further pleas and proceedings were had herein:

Come the parties by counsel and the Court being advised in the premises, grants Appellant's petition heretofore filed herein in said cause to advance this cause and said cause is advanced.

36 And afterwards, to-wit: on the 15th day of January 1912, the same being the 43rd Judicial Day of the November Term, 1911, of said Court, the following further pleas and proceedings were had herein:

Come the parties by counsel and the Court being sufficiently advised in the premises, sets the above entitled cause for oral argument for January 26, 1912, and notices thereof are duly issued. (Here Insert.)

And afterwards, to-wit: on the 20th day of January 1912, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel and files additional authorities in the words and figures following (Here Insert).

And afterwards, to-wit: On the 25th day of January 1912, the same being the 52nd Judicial Day of the November Term, of said Court, the following further pleas and proceedings were had herein:

Come the parties by counsel and the Court being sufficiently ad-

vised in the premises, postpones the oral argument herein until February 2, 1912, and notices thereof are duly issued. (Here Insert.)

37 And afterwards, to-wit: On the 3rd day of January, 1913, the same being the 35th Judicial Day of the November Term, 1911, of said Court, the following further pleas and proceedings were had herein:

Come the parties by counsel and the Court being advised in the premises, Affirms the judgment of the Court below with an opinion pronounced by Myers, J. in which Spencer, J. did not participate, which said opinion is in the words and figures following: (Here Insert.)

38 THE STATE OF INDIANA:

In the Supreme Court, May Term, 1912.

On the 3rd day of January, 1913, being the 35th Judicial day of said November Term, 1912.

Hon. Leander J. Monks, C. J.;
Hon. Quincy A. Myers,
Hon. John W. Spencer,
Hon. Douglas Morris,
Hon. Chas. E. Cox,
Associate Justices.

No. 22140.

In the Case of

SOUTHERN RAILWAY COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Appealed from the Vanderburg Superior Court.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by Myers, J. Spencer, J., did not participate in this decision.

39 This was an action brought by appellant against appellee to recover the statutory penalty provided by Section 3 of the Acts 1907, *Acts 1907*, 186, Burns 1908, Sec. 5280.

That section reads as follows:

Grab Irons—Hand Holds.—That it shall be unlawful for any such common carrier to haul, or permit to be hauled or used on its line, any locomotive, car, tender or similar vehicle used *on* moving state-traffic not provided with secure grab irons or hand holds in the sides or ends thereof. The penalizing section is 10, Burns 1908, Sec. 5287, and reads as follows: Penalty.—That every such common

carrier, or the receiver thereof, using, or permitting to be used or hauled on its line, any locomotive, car or similar vehicle or train, in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each violation, to be recovered in a suit or suits by and in the name of the Railroad Commission of Indiana for the use of the State of Indiana in any circuit or superior court of this state having jurisdiction over such offending carrier, etc."

The first error assigned and presented is as to overruling the demurrer to the complaint, which was on the grounds of want of jurisdiction in the court over the subject matter, and insufficiency of facts to constitute a cause of action.

The material allegations of the complaint are that defendant is, and was at the times therein referred to a common carrier engaged in moving traffic by railroad between points within the State of Indiana, and as such common carrier on February 24, 1910, and for a long time prior and subsequent to that date, owned, used and operated between said points locomotives, and cars, and on that date on and over the tracks owned or in the operation or control of defendant had hauled its said locomotives and cars and among said cars owned or operated by defendant was a car No. 61264 of the gondola description, being hauled or moved in train No. 77 by locomotive No. 641 of defendant, which car was loaded with coal and billed from Boonville, Indiana, to Milltown, Indiana. That while at Huntingburg, Indiana, a station on its line between said stations of Boonville and Milltown, defendant unlawfully permitted said car to be hauled or used on its said line, said car not then being provided with secure grab irons or hand holds on the sides or ends of said car; that the hand-hold on said car was broken, bent and twisted against the body of the car, thereby rendering the same of no use, and the same could not be used, and was not a grab iron or hand hold, and that said car at the time was being used in moving traffic and freight between points in the State of Indiana.

The claimed insufficiency of the complaint for want of facts, and the want of jurisdiction of the subject matter is based upon the assumption that courts take judicial notice that appellant was at the time engaged in interstate commerce. No authority for that proposition is cited, and we are unable to find authority for it, and we think it is an erroneous assumption.

The real controversy in the case arises over the action of the court in sustaining a demurrer to the answer. The answer is predicated upon the alleged facts that on February 24, 1910, appellant was and now is a corporation organized and existing under and by virtue of the laws of the State of Virginia, and is a railroad company engaged in the operation of a railroad and the carrying of passengers and freight for hire; that it was and is engaged in interstate commerce between states of the United States, and has railroad tracks, and is operating a railroad as a common carrier in ten states and in the District of Columbia, and is engaged in interstate commerce in the State of Indiana, and was at said time. That all its locomotives and cars, including the car mentioned in plaintiff's complaint, were fre-

quently and commonly used and engaged in interstate traffic. That on the 24th day of February, 1910, said car mentioned in plaintiff's complaint was loaded with coal and was consigned to and from points within the State of Indiana; that said car was in train No. 77, and that train No. 77 was at said time engaged in hauling interstate traffic: that said train No. 77 originated in the State of Illinois, and passed through, and into the State of Indiana, and various other states; that said car was a part of said train No. 77 and that said train No. 77 contained twenty cars, and all the other cars of said train and the train crew were at said time being used by the defendant in interstate commerce between the state-, and that said other cars were consigned from one of the states to, into and
41 through another state. That at the time certain Federal statutes, which are set out, were in full force, regulating, and controlling the equipment of cars, and engines used by railroads and common carriers engaged in interstate commerce, including automatic couplers, and grab irons, commonly called the "Safety Appliance Act," by and in which, penalties are provided for failure to comply with the provisions of those Acts, and the courts, and jurisdictions in which such penalties may be recovered; that by reason of the premises all the cars and engines of the defendant, including the car in question, were at the time complained of, subject to the exclusive power of the Congress of the United States, and exclusively within the regulation and control provided by said Acts of Congress.

The Federal Safety Appliance Act of March 2, 1893, by its fourth section, provided: "That from and after the first day of July Eighteen hundred and ninety five * * * it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons and hand holds in the ends and sides of each car, for greater security to men in coupling and uncoupling cars." U. S. Comp. Stat. 1901, p. 3174.

The act was amended March 2, 1903, by section 1 as follows: "Be it enacted * * * and the provisions and requirements hereof, and of said act relating to train brakes, automatic couplers, grab-irons, and the length of draw bars, shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the District of Columbia, and to all other locomotives, tenders, cars and similar vehicles used in connection therewith, excepting, etc." U. S. Comp. Stat. Supp. 1909, p. 1143.

The 6th section of the Act of 1893 as amended in 1896, provides a penalty of $100.00 for each violation of the act, and for action upon part of the United States District Attorney in the District Court of the United States having jurisdiction. 29 U. S. Stat. at Large 85, Ch. 87.

It is the contention of appellant, first, that the sole jurisdiction for punishment for the violation alleged in the complaint is in the United States District Court, and second, that the Interstate Commerce Act having covered the same field under the power "to regulate commerce" the Indiana statute is void as to a car used on a rail-

road engaged in interstate commerce whether the car be
42 loaded and delivered within a state, or whether moved loaded or empty within a state. The answer set out sufficiently discloses appellant's contention and theory.

The solution of the second proposition necessarily determines the first, for the reason that if the Federal Act is alone controlling, the action to impose a penalty must be in the United States courts, while if the Federal Act is not controlling as to the subject matter itself, it is not claimed that there is want of jurisdiction in the state courts.

The controversy is made to wage around the question whether the Act of Congress refers to, and includes any car in use at any time, on any railroad engaged in interstate commerce generally, or in any interstate train, irrespective of whether it is at any particular time carrying an intrastate shipment, or whether at the particular time loaded and delivered wholly within a state, through which such railroad or train runs.

It is the urgency of appellee that the State Act is not an effort to regulate or interfere with interstate commerce and is in aid of the Safety Appliance Acts of Congress, and not repugnant thereto, and that where they do not conflict the carrier is answerable to both statutes.

An examination of the State statute discloses that it seeks to restrict its operation wholly to the movement of purely state traffic: in fact, the tenth section expressly excepts "locomotives, tenders, cars, similar vehicles or trains, while any of which are in actual use in interstate commerce," and the question is, notwithstanding this fact, is its effect a regulation or interference with or burden upon interstate commerce, or in conflict in actual operation with the Federal Act, as applied to the character of the shipment disclosed by the answer.

The car in question was at the time used in hauling an wholly intrastate shipment; it was in a train all the other cars of which were used in interstate shipments, or passing from Illinois into or through Indiana, by a train originating in the former state, manned by a crew coming from Illinois. The answer seems to have been drawn under the theory of the holdings in several Federal cases, here relied on. Voelker v. Railway Co. 116 Fed. 867; Daniel v. Ball, 10 Wall. 557; Wabash, etc., Co. v. United States, 168 Fed. 1; Elgin, etc., Co. v. United States —; United States v. Illinois, etc., Co. 168 Fed.
43 546; Southern Ry. Co. v. United States, 164 Fed. 347, Aff. 222 U. S. 20; Employers Liability Cases; Howard v. Illinois, etc., Co. 207 U. S. 463; Johnson v. Southern, etc., Co. 196 U. S. 1; United States v. Wheeling, etc., Co. 167 Fed. 198; Gloucester Co. v. Penna., 114 U. S. 196; Welton v. Missouri, 91 U. S. 275; Reid v. Colorado, 187 U. S. 137; Easton v. Iowa, 188 U. S. 220; United States v. International, etc., Co. 174 Fed. 638; And later cases, Mondou v. New York; 2 Employers' Liability Case, 223 U. S. 1; 56 L. Ed. 327; Northern Pac. Co. v. Washington, 222 U. S. 370, 56 L. Ed. 237.

There are some general propositions that may be regarded as settled, which will aid in the solution of the questions involved. First,

that the power of regulating commerce "among the States" is i
Congress, and the subject of exclusive Federal control. State v
Adams, etc. 171 Ind. 138; United States Co. v. State, 164 Ind. 196
Mondou v. New York etc. Co. supra; Northern etc. Co. v. State
222 U. S. 370, 56 L. Ed. 237; Southern etc. Co. v. Reid, 222 U. S
424, 448, 56 L. Ed. 253, 263; Southern etc. Co. v. United States
supra; Atlantic etc. Co. v. Riverside Mills, 219 U. S. 186, 55 L. Ed
167; Interstate Commerce Comm. v. Illinois etc. Co., 215 U. S. 452
Howard v. Illinois etc. Co., supra; Schlemmer v. Buffalo etc. Co
205 U. S. 1; Johnson v. United States, supra; Northern Securities
Co. v. United States, 193 U. S. 197; The Roanoke, 189 U. S. 1
Easton v. Iowa, supra; Hanley v. Southern etc. Co. 187 U. S. 617
Reid v. Colorado, supra; Addyston, etc. Co. v. United States, 17
U. S. 211; New York v. New York, etc. Co. 165 U. S. 628; Cros
v. North Carolina, 132 U. S. 131; Nashville etc. Co. v. Alabama
128 U. S. 96; Smith v. Alabama, 124 U. S. 465; Sherlock v. Alling
93 U. S. 99; Hall v. De Cuir, 95 U. S. 485; Gloucester Co. v. Penna.
supra; Gibbons v. Ogden, 9 Wheat, 1; Sturges v. Crowninshield
4 Wheat. 122; Sinnot v. Davenport, 22 How. 227; Cooley v. The
Board, 12 How. 299; Prigg v. Comm'wlth. 16 Peters 539; Welton
v. Missouri, supra; United States v. Union etc. Co. 192 Fed. 339
United States v. International etc. Co., supra; United States v
Wheeling etc. Co., supra; Chicago etc. Co. v. United States, 165 Fed
423; United States v. Colorado etc. Co., 157 Fed. 321; United States
v. Illinois etc. Co., supra; Snead v. Central etc. Co., 151 Fed. 614.

Second, that when Congress does act, and its action covers the
subject matter, its action is exclusive, as to interference. Pitts
burgh etc. Co. v. The State, 172 Ind. 147; State v. Adams, etc. Co.
supra; Southern etc. Co. v. United States, supra; Northern
44 etc. Co. v. Washington supra; Howard v. Illinois etc. Co
supra; Johnson v. Southern etc. Co. supra; United States v
Union etc. Co. supra; United States v. International etc. Co. supra
Wabash etc. Co. v. United States, supra; United States v. Illinois
etc. Co., supra; United States v. Wheeling, etc. Co., supra;

Third. Until, and unless Congress does act, and its action covers
the subject matter, the states may act. Pittsburgh etc. Co. v. The
State, supra; Davis v. Cleveland, etc. Co. 217 U. S. 157; Missouri
etc. Co. v. Kansas, 216 U. S. 262, 54 L. Ed. 472; Reid v. Colorado
supra; Missouri, etc. Co. v. Haber, 169 U. S. 613; People v. Erie etc
Co. 198 N. Y. 369; People v. Chicago etc. Co. 220 Ill. 581, 79 N
E. 144; Lukens v. Lake Shore etc. Co. 248 Ill. 377, 94 N. E. 175
140 Am. St. 220.

Fourth. That so long as the action of the States is not repugnant
to, or does not interfere with, or place burdens upon, or undertake
to regulate interstate commerce, or mere police regulations, their
actions though in aid, or if in aid, of interstate commerce, is not
invalid, unless it is a direct interference. Pittsburgh etc. Co. v. The
State, supra; Pittsburgh etc. Co. v. Hartford City, 170 Ind. 674;
United States etc. Co. v. State, supra; State v. Adams etc. Co., supra;
State v. Indiana etc. Co., 120 Ind. 575; Savage v. Jones, 225 U. S.
501, 56 L. Ed. 1182; Standard etc. Co. v. Wright, 225 U. S. 340;

56 L. Ed. 1197; United States v. Minn. 223 U. S. 335, 56 L. Ed. 45; Mayor v. Wills etc. Co. 223 U. S. 298, 56 L. Ed. 445; Atchison etc. Co. v. Connor, 223 U. S. 280, 56 L. Ed. 436; Davis v. Cleveland etc. Co., supra; Missouri etc. Co. v. Kansas, supra; Chicago etc. Co. v. Solan, 169 U. S. 133, 42 L. Ed. 688; Lake Shore etc. Co. v. Ohio, 173 U. S. 285, 43 L. Ed. 702; Missouri etc. Co. v. Haber, supra; Gladson v. Minnesota, 166 U. S. 427; New York v. New York etc. Co. supra; Hennington v. Georgia, 163 U. S. 299, 41 L. Ed. 166; Western Union Co. v. James, 162 U. S. 650; Gulf etc. Co. v. Hefley, 158 U. S. 98, 39 L. Ed. 910; Minneapolis etc. Co. v. Emmons, 149 U. S. 364, 37 L. Ed. 769; New Orleans etc. Co. v. Miss., 133 U. S. 587, 33 L. Ed. 784; Smith v. Alabama, supra; Mobile County v. Kimball, 102 U. S. 691, 26 L. Ed. 238; Civil Rights Cases, 109 U. S. 3, 27 L. Ed. 835; People v. Erie, etc. Co. supra.

Fifth. That it is not enough to render the State law invalid, that it is similar to the Federal Act upon the same subject; it must
45 in operation interfere directly, or substantially with interstate commerce, and not be an incidental, or casual interference, or remotely affect it hurtfully. Pittsburgh etc. Co. v. The State, supra; Missouri etc. Co. v. Haber, supra; Chicago etc. Co. v. Solan, supra; Davis v. Cleveland etc. Co. supra; Louisville etc. Co. v. Commonwealth, 183 U. S. 503, 46 L. Ed. 298; Henderson etc. Co. v. Kentucky, 166 U. S. 150, 41 L. Ed. 953; Louisville etc. Co. v. Kentucky, 161 U. S. 677, 40 L. Ed. 849; New York etc. Co. v. Penna. 158 U. S. 431, 39 L. Ed. 1043; Sherlock v. Alling, 93 U. S. 99, 23 L. Ed. 819; Civil Rights cases, supra; Patterson v. Kentucky, 97 U. S. 501; United States v. Reese, 92 U. S. 214 23 L. Ed. 563; Slaughter House Cases, 83 U. S. 36, 21 L. Ed. 394; United States v. De Witt, 76 U. S. 41, 19 L. Ed. 593.

Sixth. That where both the Acts of Congress and of the State make a defined act, an offense, the commission of the act may be an offense against each, and punishable by each. Dashing v. The State, 78 Ind. 357; Snoddy v. Howard, 51 Ind. 411; State v. Gapen, 17 Ind. App. 524; Ambrose v. The State, 6 Ind. 351; 23 Cyc. 73; Reid v. Colorado, supra; Cross v. North Carolina, supra; Ex Parte Seibold, 100 U. S. 371, 29 L. Ed. 717; Moore v. The People, 14 How. 13, Fox v. Ohio, 5 How. 410.

From these premises several inquiries inject themselves into the case. First, does the Federal Act cover the particular subject matter of our State Act as to grab irons, or handholds? Second, does the State statute have a real, or substantial relation to interstate commerce? Third, is it a regulation, or an interference with interstate commerce, or does it only affect it indirectly and remotely? Fourth, is there an actual conflict between the two Acts, or is the State Act in aid of the Federal Act?

The object and purpose of both Acts are the same with respect to grab irons or hand holds on cars; that is, the protection of those who do, and must use them. That the Federal Act includes not only cars when in use in interstate commerce, but also cars commonly used on railways so engaged, even though the car is at the

particular time loaded at one point in a State, and delivered at another point in the same State, or when unloaded, or when transported in, or as part of a train engaged in, or on a railroad doing an interstate business, and the use of defective cars forbidden, is no longer an open question. Southern etc. Co. v. United States, supra; Chicago etc. Co. v. United States, supra; United States v.
46 International etc. Co. supra; Wabash etc. Co. v. United States, supra; United States v. Wheeling etc. Co., supra; United States v. Illinois etc. Co., supra; United States v. Union Stock etc. Co. 192 Fed. 530; Northern Pac. etc. Co. v. Washington, 222 U. S. 370; Pacific etc. Co. v. United States 173 Fed. 448; Union etc. Co. v. United States, 169 Fed. 404; United States v. Colorado etc. Co., 157 Fed. 321; United States v. Western etc. Co., 184 Fed. 336; Erie etc. Co. v. Russell, 183 Fed. 722; United States v. St. Louis etc. Co., 154 Fed. 516; United States v. Chicago etc. Co., 157 Fed. 616; Johnson v. Great Northern etc. Co., 178 Fed. 643; United States v. Louisville etc. Co., 186 Fed. 280; Southern etc. Co. v. Snyder, 187 Fed. 492; United States v. Baltimore etc. Co., 184 Fed. 94; St. Louis etc. Co. v. Taylor, 210 U. S. 281; Voelker v. Railway Co., supra.

Whether the particular car was used in a wholly intrastate shipment, or in an interstate shipment, or in connection with cars which were in a train employed in interstate shipments, could have no real relation to any other subject than the safety of employees, and as to that matter it would be wholly immaterial as to the particular service it was employed in at the time. It may be assumed that in the train, the dangers were the same as on like cars, which were engaged in wholly interstate transportation, so that the distinction, if any, does not arise from the character of the service of the car, but from the car itself, and its connection in a train carrying interstate commerce, and the matter of garb irons, or hand holds on the car has no real or substantial relation to interstate commerce, in the sense of being a regulation. We are speaking of the Act in force at the time this Act was begun. What may be the effect of the Act of Congress of April 14, 1910, in detail providing just what grab irons or hand holds shall be placed on cars, and where need not be considered unless it could be said to apply to this case, which is not claimed. It is true that the regulation of "commerce among the States" is held to extend to all the instrumentalities of interstate commerce.

The Courts of Missouri and Wisconsin have come to directly opposite views from the courts of New York, Montana and Washington, upon the subject of provisions with respect to hours of labor. State v. Chicago etc. Co. 136 Wis. 407, 19 L. R. A. (N. S.) 326, 117 N. W. 686; State v. Missouri etc. Co., 212 Mo. 658, 111
47 S. W. 500; State v. Northern etc. Co. 36 Mont. 591, 15 L. R. A. (N. S.) 134, 93 Pac. 945; People v. Erie etc. Co., 198 N. Y. 369; State v. Northern Pac. Co., 53 Wash. 673, 102 Pac. 876.

The latter case was however reversed on writ of error by the Supreme Court of the United States, 222 U. S. 370, approving the doctrine of the cases in Missouri and Wisconsin, and holding that

where Congress had enacted a law as to hours of labor, by its terms not to go into effect until sometime later, a State could not in the interim enact a law regulating the hours of labor of employees within the State. The case goes to the greatest length yet declared by that court.

But this doctrine must be supplemented by that other rule, that there must be such interference with such commerce as to amount to a regulation, or burden upon it, or affect it adversely, and not because it may affect it indirectly or remotely, nor where there is no relationship with interstate commerce as such. Pittsburgh etc. Co. v. The State, supra, and cases there collected; State v. Indiana etc. Co., 120 Ind. 575; Atlantic etc. Co. v. Mazuraki, 216 U. S. 122, 54 L. Ed. 411; Louisville etc. Co. v. Kentucky, 183 U. S. 503; Missouri etc. Co. v. Haber, supra; Gladson v. Minnesota, 166 U. S. 427; Henderson Co. v. Kentucky, Id. 150; Western Union Co. v. James, supra; Louisville Co. v. Kentucky, 161 U. S. 677; New York etc. Co. v. Penna., 158 U. S. 431; Minnesota v. Barber, 136 U. S. 313, 34 L. Ed. 455; Nashville etc. Co. v. Alabama, 128 U. S. 96; Mugler v. Kansas, 123 U. S. 623, 31 L. Ed. 205; Sherlock v. Alling, supra.

There is a distinction sought to be made in fact, and in law, with respect to Sec. 3 of the Act in controversy. The Act seeks to deal only with cars or vehicles "used in moving of state traffic." That there may be cars wholly restricted to moving state traffic may be true, but it must have also been in the minds of the legislators that such cars might be used on railroads engaged in interstate commerce, and in connection with cars so engaged, and also in view of the holdings of the Federal Courts, that such cars would come within the purview of the Acts of Congress upon the same subject, but it was doubtless also in their minds that the State had not surrendered its police powers, under the act of Federal union, and also that even where Congress had legislated upon the subject, so long as the State Act did not interfere with or attempt to regulate the conduct of interstate commerce, or lay a burden upon it, or is inconsistent with it, the fact that the Act might indirectly affect it,
was not sufficient to render it invalid, and it is difficult to
48 perceive how it does any of those things, or can have any
such result, in view of the holdings of the Supreme Court of the United States upon these questions, and as to the reserved police powers of the States, as shown by the cases herein cited. It must be, and is conceded, that in case of conflict, the State statute must yield, that is, if the two statutes prescribe different rules, or the enforcement of both may expose the carrier to conflicts in their duties. In practical application, and for the purposes for which the Acts are intended, the safety of employees, it is immaterial whether the train operatives are citizens of the State or not: the fact that they may be, is sufficient to indicate that it is not the State of citizenship of the employees in a train which is the test of validity or invalidity: the State has the right and the power, to protect not only its own citizens, but citizens of another state when within its borders. New York etc. Co. v. New York, 165 U. S. 628; Mor-

gan & Co. v. Louisiana etc. Co. 118 U. S. 455; Campagnie etc. Co. v. State Board, 186 U. S. 380; Barbier v. Cormolly (1885) 113 U. S. 27.

The Federal Act requires "secure grab irons and hand holds in the ends and sides of each car"; the State act requires "secure grab irons or hand holds in the sides or ends thereof." Under the Federal act it has been held that these grab irons or hand holds, must be both in the sides, and ends of each car. United States v. Baltimore etc. Co. 184 Fed. 94; United States v. Norfolk etc. Co. Id. 99.

Under the State Act, grab irons in the sides or ends of a car are sufficient, and it is manifest that the Federal Act is broader in its requirements. This being true, there could never be a violation of the State Act which would not be a violation of the Federal Act. The former therefore could hardly be said to be in aid of the latter, save as a stimulus to caution, and effort at conformity. Hancock v. Yaden (1889) 121 Ind. 366, 373, for the Federal Act covers the requirement of the State Act, and goes further, unless it can be put upon the ground of the power of the State as a police power to punish additionally for the same offense.

To our minds the cases of Lukens v. Lake Shore Co. 248 Ill. 377, 94 N. E. 175, 140 Am. St. 220; Detroit etc. Co. v. The State, 91 N. E. 869, and New York etc. Co. v. New York, 165 U. S. 638, lend little if any aid to the solution of the question. The force of the Lukens and Detroit etc. Co. cases is much impaired, if not
49 overthrown, by the later decisions of the Supreme Court of the United States, to the point that the cars there in question, as well as the one here in question, were within the control of the Act of Congress, though the latter decision is grounded upon the proposition that even though the two acts were identical, and sought the same purpose, the State statute is not void "because a failure to equip the car with automatic couplers, would subject the railroad company to punishment under a State statute as well as under the Act of Congress," and that "a proper police regulation" which does not conflict with congressional legislation, is not necessarily unconstitutional, because it may have an indirect effect upon interstate commerce.

The New York case is grounded upon the fact that Congress had made no regulation as to heating cars.

As the State Act is less broad than the Act of Congress, we conclude that it can not be upheld upon the ground of being in aid of the latter, and for the same reason can not be said to affect commerce, except only indirectly and remotely, nor unreasonably because no broader, so that the question finally resolves itself into the proposition whether a carrier may be punished in both jurisdictions.

If punishment by the State can be said to be by way of reprisal, or for the purpose, or as having the effect of laying a burden upon interstate commerce, it can not be upheld. If it can be regarded as a reasonable police regulation as further tending to induce caution, in the interest of safety of operatives, it may be upheld, within the rules declared by the Supreme Court of the United States, the final arbiter upon the question.

In Missouri etc. Co. v. Larabee, 211 U. S. 612, the action of the Supreme Court of Kansas commanding a railroad company to transfer cars to and from a mill on another railroad, it was said, "The roads are therefore engaged in both interstate commerce and that within the State. In the former they are subject to the regulation of Congress: in the latter to that of the State, and to enforce the proper relation between Congress and the State the full control of each over the commerce subject to its dominion must be preserved. * * * Running through the argument of counsel for the Missouri Pacific is the thought that the control of Congress and the delegation of that control to a commission necessarily withdrew from the State all power in respect to regulations of a local character. This proposition can not be maintained." Pittsburgh etc. Co. v. The State, supra.

In Asbell v. Kansas 209 U. S. 251, 52 L. Ed. 778, which was the case of a State statute making it a misdemeanor to transport cattle into the State without inspection, it was said, "While the State may not legislate for the direct control of interstate commerce, a proper police regulation which does not conflict with congressional legislation on the subject involved, is not necessarily unconstitutional, because it may have an indirect effect upon interstate commerce." Jamieson v. Indiana etc. Co. 128 Ind. 581; Minneapolis etc. Co. v. Emmons, supra; Gulf etc. Co. v. Hefley, supra; New Orleans etc. Co. v. Miss., supra; Hennington v. Georgia, supra; Missouri etc. Co. v. Haber, supra; Gibbons v. Ogden, supra; McDonald v. The State, 81 Ala. 279; 60 Am. R. 159, 2 So. 830; New York v. New York etc. Co. supra; Lake Shore Co. v. Ohio, supra; Pierce v. Van Dusen, 78 Fed. 698; State v. Railroad Co. 24 W. Va. 783, 49 Am. R. 290; Railroad Co. v. Fuller, 17 Wal. 569, 21 L. Ed. 710; Smith v. The State, 100 Tenn. 499, 41 L. R. A. 432; Stewart v. Harry, 3 Bush. (Ky.) 438.

The same act or series of acts may constitute an offense equally against the United States and the State, and subject the guilty party to punishment under the laws of each government." Cross v. North Carolina, supra; Ex Parte Seibold, supra; Reid v. Colorado, supra; Moore v. The People, supra; United States v. Marigold, 9 How. 560; Fox v. Ohio, supra; Dashing v. The State, supra; Snoddy v. Howard, supra; Cooley v. The Board etc. supra; State v. Moore, 6 Ind. 436; State v. Penny, 19 S. C. 218; In re Loney, 134 U. S. 372; United States v. Barnhart, 22 Fed. 290; United States v. Wells, 28 Fed. Cas. 593; State v. Kirkpatrick, 32 Ark. 117, collecting and reviewing cases of acts which are offenses against both Federal and State laws; People v. McDonnell, 80 Cal. 281, 13 Am. St. 159, 22 Pac. 190; United States v. Amy, 24 Fed. Cas. 811, 14 Md. 152; State v. Oleson, 26 Minn. 507, 5 N. W. 959; State v. Whittemore, 50 N. H. 245, 9 Am. R. 196; People v. Welch, 141 N. Y. 266, 38 Am. St. 793, 800, 36 N. E. 331, 24 L. R. A. 121; Territory v. Coleman, 1 Ore. 191, 75 Am. D. 554; State v. Brown, 2 Ore. 221, 224; State v. Norman, 16 Utah 457, 465, 52 Pac. 989; Jetts Case, 18 Gratt., 933, 942; Smith v. United States, 1 Wash. T'y 262, 270; People v. White, 34 Cal. 183, 186; Martin v. The State, 18 Tex. App.

225; State v. Bardwell, 72 Miss. 541; 18 So. 379; Campbell v.
51 United States, 4 Fed. Cas. 1203; United States v. Given, 25 Fed. Cas. 1331, reviewing cases; and United States v. Wells, 28 Fed. Cas. 523, sustaining the power of both Federal and State governments to punish acts violating laws of both; Bohanan v. State, 18 Neb. 77, 53 Am. R. 806, 24 N. W. 399; In re Freeman, 44 Mo. 183; Smith v. Maryland, 18 How. 71, 15 L. Ed. 269; Commonwealth v. Ellis, 158 Mass. 555; Commonwealth v. Logario, 141 Mass. 81; Commonwealth v. Fenton, 139 Mass. 195; People v. Miller, 38 Hun. 82.

It was an acknowledged rule in this State until abrogated by express statute, to punish for an infraction of the State law, and a municipal ordinance covering the same offense.

In Gibbons v. Ogden, supra, it was said, "So if a State, in passing on subjects acknowledged to be within its control, and with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, it does not derive its authority from the particular power which has been granted, but from some other which remains with the State, and may be executed by the same means. All experience shows that the same measure or measures scarcely distinguishable from each other may flow from distinct powers; but this does not prove that the powers themselves are identical. Although the means used in their execution may sometimes approach each other so nearly as to be confounded, there are other situations in which they are sufficiently distinct to establish their individuality." This assertion appears to us to cover the case in hand. Even though a car ordinarily and commonly used in interstate commerce, and being carried on a railroad engaged in interstate commerce, the hazards against which the statute is directed, are hazards not of such commerce, but of the operation of the car in this State, and is properly the subject of its police power, and properly punishable by it, as well as by the Federal Act, and is not a regulation of that commerce. It requires no new duty, and imposes no limit on the free use of cars, contains no new or different restrictions to persons or things carried or the manner, or times of carriage, or as to the car itself, and the fact that a like penalty is imposed, is not a burden upon commerce for the reason if for no other, that if the Federal law is obeyed there can be no penalty, and if it is not, the carrier should not be heard to say that a police regulation of a State for the protection of its citizens or
52 citizens of another State, while in this State, is invalid, simply because it is subject to punishment under the Federal Act. The only effect so far as interstate commerce is concerned is to punish the guilty transgressor, and not to reach the subjects of such commerce, or those interested in its being unhampered, and is not the exercise of extra territorial authority or power. Turner v. Maryland, 107 U. S. 38; Ward v. The State, 12 Wall. 418.

We conclude that the section is not invalid, and the judgment is affirmed.

Spencer, J., did not participate in the decision of this cause.

53 And afterwards, to-wit: on the 9th day of January, 1913, the same being the 40th Judicial Day of the November Term, 1912, of said Supreme Court, the following pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files in the office of the Clerk of the Supreme Court, its petition for the allowance of a writ of error, said petition and the allowance thereof by Noble C. Butler, Clerk of the United States Court at Indianapolis, Indiana, being hereto next below attached, and being as follows:

54 And on the same day, the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files his citation on said writ of error, duly signed by Hon. Quincy A. Myers, Chief Justice of this Court, and proof of service of the citation on the defendant in error, said citation and proof of service thereof being hereto next below attached, and being as follows:

55 UNITED STATES OF AMERICA, *ss:*

To the Railroad Commission of Indiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington thirty (30) days after the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of Indiana, wherein Southern Railway Company is Plaintiff in Error, and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the Plaintiff in Error, as in the said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Quincy A. Myers, Chief Justice of the Supreme Court of Indiana this 9th day of January, 1913.

QUINCY A. MYERS,
Chief Justice of the Supreme Court of Indiana.

Citation accepted for the Railroad Commission of Indiana, Defendant in Error, this 9th day of January, 1913.

RAILROAD COMMISSION OF INDIANA,
By WILLIAM J. WOOD, *Chairman.*

[Endorsed:] Filed Jan. 9, 1913. J. Fred France, clerk.

56 And on the same day the following further pleas and proceedings were had in said Court, in said cause.

Comes now the Appellant by counsel, and files its bond on appeal to the Supreme Court of the United States, in the penal sum of five hundred ($500.00) dollars, with the Illinois Surety Company, as surety, which bond is taken and approved, a copy being hereto next below attached, and being as follows:

57 Supreme Court of Indiana.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
v.
RAILROAD COMMISSION OF INDIANA, Defendant in Error.

Know all men by these presents: That we, the Southern Railway Company as principal, and Illinois Surety Company as surety, are held and firmly bound unto the Railroad Commission of Indiana in the sum of Five Hundred Dollars for payment of which well and truly to be made, we, the Southern Railway Company, principal, and Illinois Surety Company, as surety, bind ourselves jointly and severally firmly by these presents.

Witness our hands and seals this 9th day of January, 1913.

The condition of this obligation is such that whereas the said Railroad Commission of Indiana instituted a certain action against the Southern Railway Company, claiming a penalty of One Hundred Dollars ($100.00), and judgment was rendered accordingly in the Vanderburg Superior Court, and subsequently an appeal was taken from said judgment to the Appellate Court of Indiana, which certified the same to the Supreme Court of Indiana, which affirmed the same; and, whereas, the said Southern Railway Company has sued out a writ of error from the Supreme Court of the United States to reverse said judgment of the Supreme Court of Indiana.

Now, therefore, if the above bounden Southern Railway Company shall prosecute said writ of error to effect and answer the judgment, all damages and costs, if it fail to make good this appeal, then this obligation shall be void, otherwise to remain in full force

58 and effect.

SOUTHERN RAILWAY COMPANY,
By JOHN D. WELMAN, *Att'y in Fact.*
[SEAL.] ILLINOIS SURETY COMPANY,
By JOHN D. WELMAN, *Att'y in Fact.*

The above and foregoing bond is approved this January 9th, 1913.

QUINCY A. MYERS,
Chief Justice of the Supreme Court of Indiana.

59 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files a writ of error from the Supreme Court of the United States, to the said Supreme Court of Indiana, in this cause, said writ of error being hereto next below attached, and being as follows:

60 UNITED STATES OF AMERICA,
District of Indiana, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Indiana, Greeting:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in said Supreme Court of Indiana before you in a suit between Railroad Commission of Indiana and Southern Railway Company, wherein was drawn in question the validity of a statute of or an authority exercised under the State of Indiana on the ground of their being repugnant to the Constitution of the United States and the Statute of the United States made in pursuance thereof, and the decision was in favor of such their validity; a manifest error has happened to the great damage of the said Southern Railway Company we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 5th day of February, 1913, in the said Supreme Court to be then and there held that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the said Supreme Court, the 9th day of January, in the year
61 of our Lord Nineteen Hundred and Thirteen.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk of the District Court for the District of Indiana.

Allowed by
QUINCY A. MYERS,
Chief Justice of the Supreme Court of Indiana.

[Endorsed:] Filed Jan. 9, 1913. J. Fred France, Clerk.

62 And on the same day, the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files an Assignment of Errors in the Supreme Court of the United States, on the writ of error herein, said assignment of errors being hereto next below attached, and being as follows:

63 Supreme Court of the United States.

SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
RAILROAD COMMISSION OF INDIANA, Defendant in Error.

Assignment of Errors.

The plaintiff in Error, the Southern Railway Company, assigns the following errors as having been committed herein:

1. The Court erred in failing to hold that the Act of the legislature of Indiana, (being Chapter 118, approved March 8, 1907, and being the same Act contained in Burns' Revised Statutes of 1908, Section 5280 and following) was contrary to the Constitution of the United States and to the Statutes passed by the Congress of the United States in pursuance thereof; and particularly in violation of Article 1, Section 8, Sub-section 3 of the Constitution of the United States.

2. The Court erred in failing to hold that said Act of the State of Indiana, as above described, embraced matters within the exclusive jurisdiction of the United States, and which had been covered by and embraced in the Statutes of the United States, particularly the Act of Congress of the United States known as the Safety Appliance Act, and that such Act of Congress superseded the provisions of said Act of the State of Indiana as aforesaid.

3. The Court erred in failing to hold that the car, on account of whose defective equipment a penalty was sought to be recovered, was at the date when said penalty was sought to be recovered, embraced and covered by the said Act of Congress, commonly known as the Safety Appliance Act, and not embraced by the said Indiana Act.

4. The Court erred in holding there could be a penalty inflicted against the Plaintiff in Error on account of the alleged defect

64 in the equipment of the car in question, both under the laws of the State of Indiana and the Acts of Congress, whereas the said Acts of Congress exclusively governed the matter in controversy, and no penalty could be inflicted upon the Plaintiff in Error on account of any defective equipment of such car except under said Acts of Congress and by proceedings taken in conformity therewith.

5. The Court erred generally in its decision against the Plaintiff in Error.

Wherefore, for these and other manifest errors appearing in the record the said Southern Railway Company, Plaintiff in Error, prays that the judgment of the said Supreme Court of Indiana be reversed and set aside and held for naught, and that judgment be rendered for Plaintiff in Error granting it its rights under the statutes and laws of the United States, and Plaintiff in Error also prays judgment for its costs.

ALEXANDER P. HUMPHREY,
JOHN D. WELMAN,
Attorneys for Plaintiff in Error.

[Endorsed:] Filed Jan. 9, 1913. J. Fred France, Clerk.

65 STATE OF INDIANA:

In the Supreme Court.

I, J. Fred France, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a full, true and complete transcript of the record of proceedings had, papers filed, motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the Supreme and Appellate Courts of Indiana, in the above entitled cause #22140, Southern Railway Company vs. Railroad Commission of Indiana, appealed from the Vanderburg Superior Court; also the original petition for the allowance of the writ of error, the original writ of error from the Supreme Court of the United States to the Supreme Court of Indiana, with the allowance thereof; the original citation to the defendant in error and proof of service thereof; a copy of the original bond and its approval by the Chief Justice of said Supreme Court and the assignment of errors in the Supreme Court of the United States, as appears from the papers on file in my office.

Which said transcript, annexed hereto, together with said original petition for the allowance of a writ of error, said original writ of error, original citation, copy of the original bond and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In witness whereof, I hereto set my hand and affix the seal of said Supreme Court, at the City of Indianapolis, Indiana, this 15th day of January 1913.

[Seal Supreme Court, State of Indiana, MDCCCXVI.]

J. FRED FRANCE,
Clerk Supreme Court of Indiana.

Endorsed on cover: File No. 23,520. Indiana Supreme Court. Term No. 440. Southern Railway Company, plaintiff in error, vs. The Railroad Commission of Indiana. Filed January 24th, 1913. File No. 23,520.

No. 107

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1914

SOUTHERN RAILWAY COMPANY, *Plaintiff in Error,* v. RAILROAD COMMISSION OF INDIANA, *Defendant in Error.*	No. 449 Error to the Supreme Court of the State of Indiana

BRIEF FOR PLAINTIFF IN ERROR.

ALEXANDER P. HUMPHREY,
EDWARD P. HUMPHREY,
JOHN D. WELMAN,
Counsel for Plaintiff in Error.

JOHN P. MORTON & COMPANY, INC., LOUISVILLE, KY.

SUBJECT INDEX.

TABLE OF CASES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1914

SOUTHERN RAILWAY COMPANY, *Plaintiff in Error,* v. **RAILROAD COMMISSION OF INDIANA,** *Defendant in Error.*	**No. 440** **Error to the Supreme Court of the State of Indiana**

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This is an action that was brought in the Superior Court of Vanderburgh County, State of Indiana, to the March Term, 1910, to recover a penalty under sections *3* and *10* of the acts of the Legislature of Indiana of *1907*, page *186*, sections *5280* and *5287*, *Burns' R. S. 1914*. These sections are as follows:

> "5280. GRAB IRONS—HAND HOLDS. That it shall be unlawful for any such common carrier to haul, or permit to be hauled or used on its line, any locomotive, car, tender or similar vehicle used in moving of State traffic not provided with secure grab-irons or hand holds in the sides or ends thereof."

> "5287. PENALTY. That every such common carrier, or the receiver thereof, using, or permitting to be used or hauled on its line, any locomotive, tender, car, or similar vehicle or train, in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each violation, to be re-

covered in a suit or suits to be brought by and in the name of the Railroad Commission of Indiana for the use of the State of Indiana in any circuit or superior court of this State having jurisdiction over any such offending carrier," etc.

The above act is similar to one of the clauses of the Federal Safety Appliance Act of March 2, 1893.

The violation charged is the use of a certain car not provided with secure hand holds or grab irons. The car at the time was being used to transport coal between points in the State of Indiana and was in a train of twenty-one cars. The train and all the other cars were transporting interstate traffic. The employes on said train were engaged at the time in interstate commerce; the appellant is a railway engaged in interstate commerce and the car in question was usually engaged in interstate commerce.

The complaint in said cause, omitting the caption and signatures, is as follows: (*R. 4.*)

COMPLAINT.

"The plaintiff, complaining of the defendant, says: That the defendant is and was at all times herein referred to a common carrier engaged in moving traffic by railroad between points within the State of Indiana.

"That as such common carrier the defendant, on the 24th day of February, 1910, and for a long time prior and subsequent thereto, owned, used and operated between said points locomotives and cars.

"That on the 24th day of February, 1910, on and over the tracks owned or in the operation or control of the defendant company, said defendant had and hauled its said locomotives and cars, and among said cars owned or operated by the defendant company

was a car No. 61264, of the gondola description, being hauled or moved in train No. 77 by locomotive No. 641 of said defendant.

"That said car No. 61264 was loaded with coal and billed from Boonville, Indiana, to Milltown, Indiana.

"That while at Huntingburg, Indiana, a station on the line of said defendant company, between said stations of Boonville and Milltown, the defendant company unlawfully permitted said car to be hauled or used on its said line, said car not being then provided with secure grab-irons or hand-holds on the sides or ends of said cars.

"That the hand-hold on said car was broken, bent and twisted against the body of the car, thereby rendering the same of no use, and the same could not be used and was not a grab-iron or hand-hold.

"That at said time and place said car was being used in moving State traffic and freight between points in the State of Indiana.

"That by reason of the aforesaid the defendant is liable to a penalty for the use of the State of Indiana in the sum of one hundred dollars ($100.00) to be recovered herein.

"WHEREFORE the plaintiff prays judgment for the recovery of said penalty and for all other and proper relief."

To this complaint the plaintiff in error, Southern Railway Company (hereinafter called Railway Company), demurred for the reason that the court had no jurisdiction over the subject of the action, and that said complaint did not state facts sufficient to constitute a cause of action. (*R. 5.*)

This demurrer was overruled as to each question, with exceptions. (*R. 6.*)

The Railway Company then filed its answer (*R. 7*), a copy of which answer, omitting the caption and signature, is as follows:

ANSWER.

"The defendant Southern Railway Company, for answer to plaintiff's complaint herein, says:

"That at the time of the things complained of in plaintiff's complaint, to-wit, on the 24th day of February, 1910, it was and now is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, and is a railroad company engaged in the operation of a railroad and the carrying of passengers and freight for hire; that it was and is engaged in interstate commerce between States of the United States, and has railroad tracks and is operating a railroad as a common carrier in ten States and in the District of Columbia, and is engaged in interstate commerce in the State of Indiana, and was at said time. That all its locomotives and cars, including the car mentioned in plaintiff's complaint, were frequently and commonly used and engaged in interstate traffic. That at said time, to-wit, the 24th day of February, 1910, said car No. 61264 mentioned in plaintiff's complaint was loaded with coal and was consigned to and from points within the State of Indiana; that said car was in train No. 77, and that said train No. 77 was at said time engaged in hauling interstate traffic; that said train No. 77 originated to-wit, in the State of Illinois, and passed through and into the State of Indiana and various other States; that said car was a part of said train No. 77, and that said train No. 77 contained twenty cars, and all the other cars of said train and the train crew were at said time being used by the defendant in interstate commerce between the States, and that said other cars were consigned from one of the States to, into and through another State.

"That on the said day, to-wit, the 24th day of February, 1910, there were in full force and effect statutes of the United States for the purpose of regulating and controlling the equipment of cars and engines used by railroads and common carriers engaged in interstate commerce, including automatic couplers, grab-irons, etc., commonly called the 'Safety Appliance Acts,' of March 2, 1893, *Chapter 196, 27 Stat. 531* (*U. S. Comp. 1901, p. 3174*), as

amended April 1, 1896, *Chap. 87, 29 Stat. 85*, and March 2, 1903, *Chap. 976, 32 Stat. 943* (*U. S. Comp. St. Supp. 1909, p. 1143*), a copy of which acts are made a part of this answer and marked Exhibit 'A.' That said acts provide for penalties for the failure to comply with the same, and the courts and jurisdictions in which said penalties or fines may be recovered. That by reason of the premises all the cars and engines of this defendant, including the car in question, were at the time complained of subject to the exclusive power of the Congress of the United States, and exclusively within the regulation and control as provided by said acts.

"WHEREFORE defendant prays a judgment in its favor, and for its costs herein laid out and expended, and for all other proper relief."

The defendant in error, the Railroad Commission of Indiana (hereinafter called Commission), demurred to this answer for the reason that it did not state facts sufficient to constitute a defense to the complaint. (*R. 11.*)

This demurrer was sustained; the Railway Company excepted and was ruled to answer November 1, 1910. (*R. 12.*)

On the day on which the Railway Company was ruled to answer it refused to plead further to the complaint. Judgment was rendered in favor of the Commission and against the Railway Company, in the sum of one hundred dollars, to which ruling and judgment the Railway Company excepted. (*R. 12.*)

The Railway Company prayed an appeal to the Appellate Court of Indiana, which was granted, and filed a bond in the sum of five hundred dollars. (*R. 12-13.*)

The Railway Company duly filed its record in said Appellate Court of Indiana, and therewith its assignment of errors, which raised and insisted on the Federal questions. (*R. 15-16.*)

On January 2, 1912, the Appellate Court of Indiana transferred this cause to the Supreme Court of Indiana. (*R. 17.*)

On January 3, 1913, the Supreme Court of Indiana affirmed the judgment. Its opinion is in the record. (*R. 18-28.*)

From that judgment this writ of error is prosecuted with supersedeas by the Railway Company against the Commission, on errors assigned as follows (*R. 32*):

ASSIGNMENT OF ERRORS.

The plaintiff in error, the Southern Railway Company assigns the following errors as having been committed herein:

1. The court erred in failing to hold that the act of the Legislature of Indiana (being Chapter 118, approved March 8, 1907, and being the same act contained in Burns' Revised Statutes of 1908, Section 5280 and following), was contrary to the Constitution of the United States and to the Statutes passed by the Congress of the United States in pursuance thereof; and particularly in violation of Article 1, Section 8, Subsection 3 of the Constitution of the United States.

2. The court erred in failing to hold that said act of the State of Indiana, as above described, embraced matters within the exclusive jurisdiction of the United States, and which had been covered by and embraced in the statutes of the United States, particularly the act of Congress of the United States known as the Safety Appliance Act, and that such act of Congress superseded

the provisions of said act of the State of Indiana as aforesaid.

3. The court erred in failing to hold that the car on account of whose defective equipment a penalty was sought to be recovered, was, at the date when said penalty was sought to be recovered, embraced and covered by the said act of Congress commonly known as the Safety Appliance Act, and not embraced by the said Indiana act.

4. The court erred in holding there could be a penalty inflicted against the plaintiff in error on account of the alleged defect in the equipment of the car in question, both under the laws of the State of Indiana and the acts of Congress, whereas the said acts of Congress exclusively governed the matter in controversy, and no penalty could be inflicted upon the plaintiff in error on account of any defective equipment of such car except under said acts of Congress and by proceedings taken in conformity therewith.

5. The court erred generally in its decision against the plaintiff in error.

ARGUMENT.

In order to determine the matter here in controversy we think it important to set out in some detail what has been the Congressional legislation as to safety appliance acts, and what has been the legislation of the State of Indiana in reference to the same subject.

Congress has passed four acts on this subject: one approved March 2, 1893; another, April 1, 1896; another, March 2, 1903; another, April 14, 1910. We will consider these acts, not separating the first and second, but taking

Section 6 of the first act as amended by the act of April 1, 1896.

The purpose of each of these acts, as given in the title, is to promote the safety of employes and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving wheel brakes, and other purposes.

The act of 1893 as amended by the act of 1896, provided:

> "That from and after January 1, 1898, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic, not equipped with a power driving-wheel brake * * * or to run any train in such traffic after that date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose."

The second section of the act provided that after the above date it should be unlawful for any such common carrier to haul, or permit to be hauled or used on its line, any car used in moving interstate traffic, not equipped with couplers automatically coupling by impact.

The third section of the act authorized a railroad which had equipped a sufficient number of its cars so as to comply with Section 1 of the act, lawfully to refuse to receive from connecting lines of road or shippers any cars not so equipped as to work and readily interchange with brakes in use on its own cars.

By the fourth section of the act it was provided that

after July 1, 1895, until otherwise ordered by the Interstate Commerce Commission, it should be unlawful for any railroad company to use any car in interstate commerce that was not provided with "secure grab-irons or hand-holds in the ends and sides of each car for greater safety to men in coupling and uncoupling cars."

By the fifth section of the act it was provided that within ninety days from the passage of this act the American Railway Association was authorized to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and upon this determination being certified to the Interstate Commerce Commission, that body should at once give notice of the standard to all common carriers engaged in Interstate Commerce.

It was further provided that if the Association should fail to determine its standard as above provided it should be the duty of the Interstate Commerce Commission to do so, before July 1, 1894, and after July 1, 1895, no cars, either loaded or unloaded, should be used in interstate traffic which did not comply with the standard above provided for.

The sixth section provided a penalty of $100 for a violation of the act, fixed the recovery of this penalty to be by suit brought by the United States District Attorney in the District Court of the United States having jurisdiction in the locality where such violation was committed. This section of the act, however, had this provision: "Provided that nothing in this act contained shall

apply to trains composed of four-wheel cars or trains composed of eight-wheeled standard logging cars, where the height of such car from top of rail to center of coupling does not exceed 25 inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs."

By the seventh clause it was provided that the Interstate Commerce Commission should have the right to extend the period within which a common carrier should comply with the provisions of the act.

By the eighth clause of the act it was provided that any employe of any such common carrier, who might be injured by any locomotive, car or train in use contrary to the provisions of this act, should not be deemed to have assumed the risk.

So much for the act of 1893 as amended April 1, 1896.

The act of 1903 provided that the act of 1893 as amended in 1896, "and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab-irons and the height of drawbars, shall be held to apply to all trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars and similar vehicles used in connection therewith, excepting those trains, cars and locomotives exempted by the provisions of the sixth section of the act of 1893, as amended by the act of April 1, 1896, or which are used upon street railways."

The second section of this act provided that whenever, as provided in the act, any train was operated with power or train brakes, not less than 50 per centum of

the cars in such train should have their brakes used and operated by the engineer on the locomotive drawing such train; and more fully to carry into effect the objects of the act, the Interstate Commerce Commission was given the power from time to time, after full hearing, to increase the minimum percentage of cars in any train required to be operated by power or train brakes; and it was further provided that failure to comply with any such requirements of the Interstate Commerce Commission should subject the railroad to like penalty as failure to comply with any requirement of the section.

It will be observed at once that whereas the act of 1893 as amended by the act of 1896 only applied to engines and cars while being used in interstate commerce, the act of 1903 applied to all the equipment of a railroad engaged in interstate commerce and to all equipment used in connection therewith.

There can be no doubt, of course, that the car in controversy in this case comes within the description of the act of 1903, being a car belonging to a railroad engaged in interstate commerce, and being a car which was used in connection with cars actually at the time engaged in interstate commerce.

The act of April 14, 1910, though passed after the transaction in controversy, is worthy of observation. The first section of this act provides that it shall apply to every common carrier and every vehicle subject to the act of March 2, 1893, as amended in 1896 and in 1903, commonly known as the Safety Appliance Act. This language is to be carefully considered: "Every common carrier and every vehicle subject to the act of March 2, 1893, as amended in 1896 and in 1903."

By the second section of this act, it is provided that after July 1, 1911, "it shall be unlawful for any common carrier subject to the provisions of the act, to haul or permit to be hauled or used on its line any car subject to the provisions of this act not equipped with appliances provided for in this act, to-wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand-holds or grab-irons on their roofs at the tops of such ladders: Provided, that in the loading and hauling of long commodities, requiring more than one car, the hand-brakes may be omitted on all save one of the cars while they are thus combined for such purpose."

By the third section of the act it is provided that within six months from the passage of the act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location and manner of application of the appliances provided for by Section 2 of this act and Section 4 of the act of March 2, 1893, and give notice of such designation to all carriers subject to the provisions of the act; and thereafter the number, location, dimensions and manner of application as designated by said Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of the act, unless changed by an order of the Interstate Commerce Commission.

The Interstate Commerce Commission, upon hearing, is authorized to extend the period within which any common carrier shall comply with the provisions of the section with respect to the equipment of cars actually in

service from the date of the passage of the act, and upon hearing, to modify or change and to prescribe the standard height of drawbars, and to fix the time within which such modification or change shall become effective and obligatory. Prior to the time so fixed it is made unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard fixed or the standard prescribed. After the time so fixed it is made unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the Commission.

By the fourth section of the act it is provided that any common carrier subject to the act, using, hauling or permitting to be used or hauled on its line, any car subject to the requirements of the act, not equipped as provided in the act, shall be liable to a penalty of $100: Provided, that where any car shall have been properly equipped as provided in the act and the equipment shall have become defective or insecure while the car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure, to the nearest available point whiere such car can be repaired, without liability for penalties imposed.

There is an exception to this in regard to hauling defective cars by means of chains instead of drawbars, unless defective cars contain live-stock or perishable fruit.

We have given a general statement of all these acts, including the one passed since the transaction complained of, with the view of showing to the court that the matter of the equipment of cars belonging to railroads engaged

in interstate commerce has been the subject of complete legislation on the part of Congress.

Let us now see what has been the legislation of Indiana on this subject.

Chapter 118 of the Acts of 1907 (vide App.), being the act approved March 18, 1907, provides, by its first section, that it shall be unlawful for any common carrier engaged in moving traffic by railroad between points within this State, to use on its line any locomotive, in moving such traffic, not equipped with power driving wheel brakes and appliances for operating the train-brake system, or to run any train in such traffic that has not 75 per centum of the cars in such train equipped with power or train-brakes, and having the brakes used and operated by the engineer of the locomotive drawing such train: Provided, that this section shall not apply to the handling of trains of cars in yard service or to a local train while engaged in performing switching service.

By this first section of the act, it is made unlawful for a common carrier engaged in moving traffic by railroad between points within this State, even though such common carrier may also be engaged in moving traffic by railroad between this State and another State, to use on its line any locomotive, in moving traffic from one point to another in this State, even though it may at the same time move traffic coming from or destined to another State, unless the locomotive is equipped in a certain way; and any such common carrier is forbidden to run any train in such traffic that has not 75 per centum of the cars in such train equipped with power or train-brakes.

By the second section of this act it is made unlawful for any such carrier to haul or permit to be hauled or

used on its line any locomotive, car, tender or similar vehicle used in moving State traffic, not equipped with couplers coupling automatically by impact.

By the third section it is provided that it shall be unlawful for any such common carrier to haul, or permit to be hauled or used on its line, any locomotive, car, tender or similar vehicle used in moving of State traffic, not provided with secure grab-irons or hand-holds in the sides or ends thereof.

By the fourth section it is made unlawful for any such common carrier to use any locomotive, tender, car or similar vehicle used in the movement of State traffic, that is not provided with draw-bars of standard height, to-wit, standard gauge cars 34½ inches; narrow gauge cars 26 inches.

Passing over the fifth and sixth sections as not necessary for our present consideration, we come to the seventh section, which provides that the Railroad Commission of Indiana may, from time to time, after full hearing and for good cause shown, increase the minimum percentage of cars in any train required to be operated by power or train-brakes.

In the tenth section of the act there is this proviso:

> "Nothing in this act contained shall apply to locomotives, tenders, cars or trains exclusively used in the movement of logs, and when the height of the draw bars on such locomotives, tenders and cars does not exceed 25 inches, or to locomotives, tenders, cars, similar vehicles or trains while any of which are in actual use in interstate commerce."

A careful study of these provisions will indicate wherein they are similar and wherein they are dissimilar.

The Indiana legislation calls for 75 per centum of cars

in the train to be equipped with brakes controllable from the engine, with the right in the Railroad Commission to increase the percentage. The act of Congress provides for 50 per centum, with right in the Interstate Commerce Commission to increase the per centum.

The act of Congress provides for a standard to be recommended by the American Railway Association, or if not, then by the Interstate Commerce Commission; and the act of 1910 expressly gives to the Interstate Commerce Commission the right to alter this standard. The Indiana act, by the fourth section, fixes the standard as a hard and fast rule.

The Congressional act excepts trains composed of four-wheeled cars and trains composed of eight-wheeled standard logging cars, where the height of the car from the top of the rail to the center of the coupling does not exceed 25 inches. The Indiana act excepts equipment exclusively used in the movement of logs, and when the height of the drawbar on such equipment does not exceed 25 inches.

The act of 1910 expressly provides that the Interstate Commerce Commission shall fix all safety appliances, prescribing their character and designating where such safety appliances as hand-holds, ladders and sill steps shall be placed, and their number and dimensions. The act of 1910 likewise allows a car whose safety appliance has become defective or insecure while the car was being used by the carrier upon its line of railroad, to be hauled to the nearest available point where such car can be repaired. The Indiana act makes no such exception.

Under the act of 1910 the Commission has made minute regulations as to all these matters.

The answer shows:

(*a.*) That plaintiff in error was a railroad engaged in interstate commerce.

(*b.*) That the car in question was commonly and frequently engaged in interstate commerce.

(*c.*) That at the time it was loaded with coal and consigned from and to points within the State of Indiana.

(*d.*) That the train of which it was a part was a train engaged in interstate commerce passing from the State of Illinois through the State of Indiana, and composed of twenty cars, all of which, except the car in question, were carrying traffic between the States and through Indiana, and that the employes of said train were passing through the State of Indiana from the State of Illinois.

The answer sets out the Federal Safety Appliance Act with its amendments, which we contend applied to the car in question at the time, to the exclusion of the statute of the State of Indiana.

Article 8, Section 3, of the Constitution of the United States, provides:

> "Congress shall have the power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

The Federal Safety Appliance Act of March 2, 1893, has this title:

> "An Act to promote the safety of employes and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes."

Section 4 of that act provides:

> "That from and after the first day of July, eighteen hundred and ninety-five, unless otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab-irons and hand-holds in the ends and sides of each car *for greater security to men in coupling and uncoupling cars.*" (Our italics.)

Said act as above, being applicable only to cars at the time engaged in interstate commerce, was amended on March 2, 1903, as follows:

> "Shall be held to apply to all trains, locomotives, tenders, cars and similar vehicles *used on any railroad engaged in interstate commerce* * * * and to all other locomotives, tenders, cars and similar vehicles used in connection therewith." (Our italics).

32 U. S. Stats., p. 943;
U. S. Compiled Stats., 1901, p. 3174;
Supp. U. S. Comp. Stats., 1903, p. 367.

This car was, at the time in question, carrying coal between points within the State of Indiana. It was commonly used in interstate traffic by a railroad engaged in interstate commerce. At the particular time it was a part of an interstate train carrying interstate traffic and served by employes engaged in interstate commerce.

We submit:

1. The car in question, moving intrastate traffic on a railroad engaged in interstate commerce, is included in and comprehended by the provisions of the Federal Safety Appliance Act of March 2, 1893, as amended by the act of March 2, 1903.

2. The Safety Appliance Act of the State of Indiana is unenforceable and void under the commerce clause of

the Federal Constitution, because Congress, by its previous legislation, has occupied the field of regulation of the same subject-matter, to the exclusion of State regulation.

The first proposition is definitely settled by the decision of this Court in the case of *Southern Railway Company v. United States, 222 U. S. 20,* in which it is said (p. 26):

> "For these reasons it must be held that the original act, as enlarged by the amendatory one, is intended to embrace all locomotives, cars, and similar vehicles used on any railroad which is a highway of interstate commerce."

In that case "two of the cars were used at the time in moving interstate traffic, and the other three in moving intrastate traffic; but it does not appear that the use of the three was in connection with any car or cars used in interstate commerce."

The case at bar is a much stronger one, for the reason that the car in question was a part of an interstate train, was coupled to cars that were hauling interstate traffic, and was operated by a railroad and employes engaged in interstate commerce.

The order of the Interstate Commerce Commission, made March 13, 1911, gave specific directions as to the location and application of grab-irons and hand-holds and was made under the act of Congress of April 14, 1910, entitled "An act to supplement" the Safety Appliance Act in question.

That the Safety Appliance Act of March 2, 1893, as amended March 2, 1903, precluded the State from making or enforcing any regulations as to grab-irons or hand-

holds, is practically decided by this Court in the case of *Northern Pacific Railway Company v. State of Washington ex rel., 222 U. S. 370*, where it is said (p. 378):

> "It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject or manifests its purpose to call into play its exclusive power. This being the conceded premise upon which alone the State law could have been made applicable, it results that as the enactment by Congress of the law in question was an assertion of its power, by the fact alone of such manifestation that subject was at once removed from the sphere of the operation of the authority of the State. To admit the fundamental principle and yet to reason that because Congress chose to make its prohibitions take effect only after a year, the matter with which Congress dealt remained subject to State power, is to cause the act of Congress to destroy itself."

The foregoing propositions are so closely related that we prefer to discuss them together.

We contend that as this particular car is within the terms of the Congressional enactments, it cannot be also within the terms of the Indiana statute; in other words, that the Safety Appliance Acts of Congress regulating the subject are exclusive.

That these Federal enactments are regulations of commerce there can be no doubt. They regulate interstate commerce and are an exercise of the exclusive authority and power of Congress over interstate commerce as give by the Constitution.

If these Federal acts were not regulations of commerce then they would be invalid and would be of no

force. They are held to be valid regulations of commerce in the case of *Johnson v. Southern Pacific Company, 196 U. S.* 1, and also in the *Employers' Liability Cases, 207 U. S. 463.* Therefore, as the Federal act is a regulation of commerce, the State act, couched in the same language, must be a regulation of commerce. Both acts then are regulations of commerce, the Federal regulating interstate and the State regulating intrastate. But the State statute can not apply to any vehicle within the domain of the Federal statute.

The Constitution provides that "Congress shall have the power to regulate commerce * * * among the several States," etc.

In *Hall v. DeCuir, 95 U. S. 485*, a number of cases are cited upon this point, as follows (p. 488):

> "As they can only be used in the State, their regulation for all purposes may properly be assumed by the State, until Congress acts in reference to their foreign or interstate relations. When Congress does act, the State laws are superseded only to the extent that they affect commerce outside the State as it comes within the State. It has also been held that health and inspection laws may be passed by the States, *Gibbons v. Ogden, 9 Wheat., 1;* and that Congress may permit the States to regulate pilots and pilotage until it shall itself legislate upon the subject, *Cooley v. Board of Wardens, 12 How., 299.* * * *
>
> "Cases have arisen in which it is held that the States may rightfully adopt certain regulations touching the subject, which are local in their operation, where none have been ordained by Congress. * * *
>
> "Repeated decisions of this court have determined that the power to regulate commerce embraces all the *instruments* by which such commerce may be conducted; and it is settled law that where

the subject to which the power applies is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of all State authority. Whatever subjects of this power, says Mr. Justice Curtis, are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress. *Cooley v. Board of Wardens, 12 How. 299.* * * *

"Few or none will deny that the power to regulate commerce among the several States is vested exclusively in Congress; and it is equally well settled that Congress has, in many instances and to a wide extent, legislated upon the subject. *Sherlock v. Alling, 93 U. S. 99.* * * *

"Differences of opinion may exist as to the extent and operation of the national law regulating commerce among the several States, but none, it is presumed, will venture to deny that it is regulated very largely by congressional legislation. Admit that, and it follows that the legislation of Congress, if constitutional, must supersede all State legislation upon the same, and, by necessary implication, prohibit it, except in cases where the legislation of Congress manifests an intention to leave some particular matter to be regulated by the several States. *Cooley v. Board of Wardens, supra.* * * *

"Such were the views of *Judge* Story more than thirty-five years ago, when he said, if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it can not be that the State legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose. *The Chusan, 2 Story 466; Sinnot v. Davenport, 22 How. 227.*

"In such a case, the legislation of Congress in what it does prescribe manifestly indicates that it does not intend that there shall be any further legis-

lation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. *Prigg v. Pennsylvania, 16 Pet. 539.*

"Whenever the terms in which a power is granted to Congress, or the nature of the power, requires that it should be exercised exclusively by Congress, the subject is as completely taken from the State legislatures as if they had been expressly forbidden to exercise the power. *Sturges v. Crowninshield, 4 Wheat. 122.*"

One of the latest cases in this Court upon questions here involved is that of *Chicago, R. I. & P. Ry. Co. v. State of Arkansas, 219 U. S. 453,* in which the statute of Arkansas providing for a train crew was upheld as not being in conflict with the commerce clause of the Constitution of the United States. The court said (p. 466):

"The statute here involved is not in any proper sense a regulation of interstate commerce. * * * Upon its face, it must be taken as not directed against interstate commerce, but as having been enacted in aid, not in obstruction, of such commerce and for the protection of those engaged in such commerce."

This case merely follows this Court's previous decisions. On page 459 it is said:

"In our judgment, these questions are concluded by former decisions and no extended discussion of them is now required. * * *

"A leading case on the general subject is *Smith v. Alabama, 124 U. S. 465,* which involved the validity under the Constitution of the United States of a statute of Alabama making it a misdemeanor for an engineer to operate, *in that State,* a train * * * without * * * obtaining a license from a board appointed by the governor.

"This Court referred to the decision in *Sherlock v. Alling, 93 U. S. 99.* * * * And, speaking by Mr. Justice Matthews, it said:

"'Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. And it may be said generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit. In conclusion, we find, therefore, first, that the statute of Alabama, the validity of which is under consideration, is not, considered in its own nature, a regulation of interstate commerce; * * * and, thirdly, that, so far as it affects transactions of commerce among the States, it does so only indirectly, incidentally and remotely. * * *'

"In *Nashville, &c. Railway v. Alabama, 128 U. S. 96,* the question was as to the validity, so far as interstate commerce was concerned, of a statute of Alabama enacted for the protection of the traveling public against accidents caused by color blindness and defective vision on the part of railroad employes, and which provided for an examination before a State Board of any person seeking a position that involved the running or management of a railroad train. * * * After referring to *Smith v. Alabama,* above cited, as holding that the statute of Alabama involved in that case, was not displaced by any express enactment of Congress in the exercise of its powers over commerce, and that until so displaced it remained 'as the law governing carriers in the discharge of their obligations, whether engaged in purely internal commerce of the State, or in commerce among the States,' this court, speaking by Mr. Justice Field, said: 'The same observation may be made with respect to the provisions of the State law for the examination of parties to be em-

ployed on railways with respect to their powers of vision. Such legislation is not directed against commerce, and only affects it incidentally, and therefore can not be called, within the meaning of the Constitution, a regulation of commerce.'

"But the case more nearly analogous to the present one is that of *N. Y. N. H. & H. Railroad v. New York, 165 U. S. 628,* where the court was required to determine the validity under the Constitution of the United States of a statute of New York regulating the heating of steam passenger cars. * * *

" 'That the statute in question had for its object to protect all persons traveling in the State of New York on passenger cars. * * * Why may not regulations to that end be made applicable, within a State, to the cars of railroad companies engaged in interstate commerce as well as to cars used wholly within such State? * * * The statute in question is not directed against interstate commerce. Nor is it within the meaning of the Constitution a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce, it is to be regarded as legislation in aid of commerce and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations within the limits. Until displaced by such national legislation as Congress may rightfully establish under its power to regulate commerce with foreign nations and among the several States, the validity of the statute, so far as the commerce clause of the Constitution of the United States is concerned, can not be questioned.' * * *

" 'Inconveniences of this character can not be avoided so long as each State has plenary authority within its territorial limits to provide for the safety of the public, according to its own views of necessity and public policy and so long as Congress deems it wise not to establish regulations on the subject that would displace any inconsistent regulations of the State covering the same ground.'

"The principles announced in the above cases require an affirmance of the judgment of the Supreme Court of Arkansas. * * * The statute here involved is not in any proper sense a regulation of interstate commerce nor does it deny the equal protection of the laws. * * *

"Undoubtedly, Congress, in its discretion, may take entire charge of the whole subject of the equipment of interstate cars, and establish such regulations as are necessary and proper for the protection of those engaged in interstate commerce. But it has not done so in respect of the number of employes to whom may be committed the actual management of interstate trains of any kind. It has not established any regulations on that subject, and *until it does* the statutes of the State, not in their nature arbitrary, and which really relate to the rights and duties of all within the jurisdiction, must control."

In *Atlantic C. L. R. Co. v. Riverside Mills, 219 U. S. 186*, it is said (page 201):

"This power to regulate is the right to prescribe the rules under which such commerce may be conducted. 'It is,' said Chief Justice Marshall, in *Gibbons v. Ogden, 9 Wheat 1*, 'a power vested in Congress as absolutely as it would be in a *single government* (our italics) having in its Constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.' It is a power which extends to the regulation of the appliances and machinery and agencies by which such commerce is conducted. Thus in *Johnson v. Southern Pac. Ry., 196 U. S. 1*, an act prescribing safety appliances was upheld. And in *Interstate Commerce Commission v. Illinois Central R. R. Co., 215 U. S. 452*, it was held that the equipment of an interstate railway, including cars used for transportation of its own fuel, was subject to the regulation of Congress. * * *

"In the *Employers' Liability Cases* (*Howard v. Illinois C. R. Co.*), *207 U. S. 463*, power to pass an act which regulated the relation of master and serv-

ant, so as to impose on the carrier, while engaged in interstate commerce, liability for the negligence of a fellow servant, for which at common law there was no liability, and depriving such carrier of the common law defense of contributory negligence save by way of reduction of damages, was upheld.

"In *Addyston Pipe Co. v. United States, 175 U. S. 211*, and *Northern Securities Co. v. United States, 193 U. S. 197*, it was held that this power of regulation extended to and embraced contracts in restraint of trade between the States."

We therefore take it as settled and conceded that the Federal Act here involved is a regulation of interstate commerce, and that Congress has the power to cover every phase of such commerce, even as to the machinery and appliances involved in its conduct. It is noticeable that this Court, in upholding the Alabama, New York and Arkansas statutes, has said that these statutes "incidentally and remotely affected the operations of commerce;" that they "were not directed against interstate commerce;" that they were "legislation in aid of commerce;" that they "regulate the relative duties and rights of persons and corporations;" that they were "*not* regulations of commerce within the commerce clause of the Constitution," and that they existed "until displaced by such national legislation as Congress may rightfully establish under its power to regulate commerce among the several States."

"In aid of commerce," as we take it, refers exclusively to statutes enacted by States previous to action by Congress in the exercise of its power to regulate commerce, and without regard to the similarity of the statutes. If this were otherwise, Congress could never regulate commerce, if a State had first acted, unless it passed an act in conflict with that of the State. If Congress passed a simi-

lar act to that of the State, the State act would still be aiding, and Congress would not have the exclusive power to regulate. This is why such State statutes are said to be "in aid" but *not* a "regulation" of commerce. It is equally true that a State may not make a valid statute obstructing such commerce, either previous or subsequent to the action of Congress, because such would be a "regulation" of commerce.

The similarity of the statutes now before us is not pertinent in one sense. The Federal act is a regulation of commerce. It is the *power to regulate* commerce vested exclusively in Congress that is "inconsistent with State regulations covering the same ground," where both have acted. These powers are inconsistent and the Federal act displaces that of the State, no matter whether the statutes themselves are similar or dissimilar. It is not the inconsistency of the statutes but the inconsistency of powers of the State and nation whereby the act of Congress displaces that of the Legislature. As Chief Justice Marshall says, "the power is vested in Congress as absolutely as it would be in a single government." The power to regulate such commerce is inconsistent in both at the same time, or, rather, it exists only in the nation.

The similarity of the statutes in question is pertinent in this sense: The Federal act must be a "regulation" of commerce, as was held in the *Johnson case, supra.* The State act, being in the same language, must be so construed. Therefore, it can not be disposed of, as were the Alabama, New York and Arkansas statutes, as "in aid," but on the contrary must fall, because it is a "regulation."

We find no decision of this Court in a case where the subject-matter involved was covered by an act of Congress prior to that of a State.

The case of *Detroit, T. & I. Ry. Co. v. State*, decided by the Supreme Court of Ohio, and reported in *82 Ohio St. 60, 91 N. E. 869*, is on all fours with the case at bar. With all due respect to that court, we can not agree with its holdings. It relies mainly upon the case of *Voelker v. C. M. & St. P. Ry. Co., 116 Fed. Rep. 867*, a case decided before the amendment of the Federal act making it apply to all vehicles owned by railroads engaged in interstate commerce. At that time the Federal act applied only to cars at the time engaged in interstate commerce, and therefore the State act was necessary in order to cover the whole ground. The case proceeds on the theory that the Ohio statute does not conflict with the Federal statute because it does not provide for a coupler of different character, and that the Ohio statute was passed under a different power and was to apply to cases assumed not to be covered by the Federal act. We do not so understand it. The Federal act applies to the cars of all railroads engaged in interstate commerce; the car was a part of an interstate train and was usually used in transporting interstate traffic; and the railroad itself was engaged in interstate commerce. The holding that the Ohio statute was not a *regulation* of interstate commerce is not in conformity with the decisions of this Court as to statutes that are *an aid* to commerce, enacted previous to the action of Congress upon the same subject-matter. The reasoning that the statute does not regulate or directly affect interstate commerce must be faulty. There is a conflict of power to enact even though the statutes do not conflict. All statutes passed upon by this Court speak for themselves as having little to do with the actual operation of interstate commerce, but only incidentally or remotely affecting it.

The State act in question, when it touches interstate commerce, is as regulative of it as the Federal act. The double liability created by the two statutes is not, we think, disposed of satisfactorily by the Ohio court. It refers, for authority for the double burden, to the case of *Cross v. North Carolina, 132 U. S. 131.* The North Carolina case specifically says, on page 139: "If it were competent for Congress to give exclusive jurisdiction to the courts of the United States of the crime * * * it has not done so"; and on page 138: "The crime against the State could not be excused or obliterated by committing another and distinct crime against the United States."

The case of *Dashing v. State, 78 Ind. 357,* is instructive on this question. It says (page 358):

> "The 8th Section of Article 1 of the Constitution of the United States provides, that 'The Congress shall have power:
>
> " 'To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
>
> " 'To provide for the punishment of counterfeiting the securities and current coin of the United States.'
>
> "The grant of power to Congress by the constitution, to provide for the punishment of counterfeiting the securities and current coin of the United States, does not, of itself, deprive the States of the right to make such counterfeiting a crime against them, and to punish it accordingly. That depends upon the action of Congress.
>
> "If Congress, though providing for the punishment of such counterfeiting as a crime against the United States, leave the several States free to make such counterfeiting a crime against them, they may do so.
>
> "This subject is well elucidated by Chancellor Kent, who says: 'The Judiciary Act' (1789) 'grants exclusive jurisdiction to the circuit courts of all crimes

and offences cognizable under the authority of the United States, except where the laws of the United States should otherwise provide; and this accounts for the proviso in the act of 24th of February, 1807, c. 75, and in the act of 10th of April, 1816, c. 44, concerning the forgery of the notes of the Bank of the United States, declaring that nothing in that act contained should be construed to deprive the courts of the individual States of jurisdiction under the laws of the several States, over offences made punishable by that act. There is a similar proviso in the act of 21st of April, 1806, c. 49, concerning the counterfeiters of the current coin of the United States. Without these provisos, the State courts could not have exercised concurrent jurisdiction over those offences, consistently with the Judiciary Act of 1789. But these saving clauses restored the concurrent jurisdiction of the State courts, so far as, under the State's authority, it could be exercised by them. There are many other acts of Congress which permit jurisdiction over the offences therein described, to be exercised by State magistrates and courts. This was necessary; because the concurrent jurisdiction of the State courts over all offences was taken away, and that jurisdiction was vested exclusively in the national courts by the Judiciary Act, and it required another act to restore it. The State courts could exercise no jurisdiction whatever over crimes and offences against the United States, unless where, in particular cases, the laws had otherwise provided; and whenever such provision was made, the claim of exclusive jurisdiction in the particular cases was withdrawn.' "

The Federal act involved fixes not only the penalty but also the court for its enforcement, to-wit, "the District Court of the United States having jurisdiction in the locality where the violation shall have been committed."

If, according to the Ohio case, the various statutes upon the subject may be enforced, why may not the State statute provide for a larger penalty than the Federal act, or one just so large that it may not be unreasonable?

And why not also enforce *Section 5275, Burns' R. S. (1908)*:

"That from and after the first day of January, 1904, it shall be unlawful for any person, firm, company or corporation operating any railroad, to use any car in any commerce wholly within this State, that is not provided with secure grab-irons or handholds on each side of the coupler at both ends of the car, and in each side of the car at each end of the car?"

Section 5276 provides a penalty of $10.00 for each offense, to be recovered by the *prosecuting attorney.*

The *Employers' Liability Cases, 207 U. S. 463*, recognize the abundant power of Congress to regulate the relations existing between the railway companies and their servants while the employes are engaged in or performing duties connected with the moving of interstate traffic. They also recognize the power of Congress as extending to the trains and all the instrumentalities connected with such traffic. This Court, in its opinion in those cases, says (page 495):

"To illustrate: Take the case of an interstate railway *train*; that is, a *train* moving in interstate commerce, and the regulation of which therefore is, in the nature of things, a regulation of such commerce. It can not be said that because a regulation adopted by Congress as to such train when so engaged in interstate commerce deals with the relation of the master to the servants operating such train or the relations of the servants engaged in such operation between themselves, that it is not a regulation of interstate commerce. This must be, since to admit the authority to regulate such train, and yet to say that all regulations which deal with the relation of master and servants engaged in its operation are invalid for want of power, would be but to concede the power and then to deny it, or, at all events, to recognize the power and yet to render it incomplete.

"Because of the reasons just stated we might well pass from the consideration of the subject. We add, however, that we think the error of the proposition

is shown by previous decisions of this Court. Thus, the want of power in a State to interfere with an interstate commerce train, if thereby a direct burden is imposed upon interstate commerce, is settled beyond question. *Mississippi R. R. Co. v. Illinois Cent. R. R., 203 U. S. 335*, and cases cited; *Atlantic Coast Line R. R. v. Wharton, 207 U. S. 328.* And decisions cited in the margin, holding that State statutes which regulated the relation of master and servant were applicable to those actually engaged in an operation of interstate commerce, because the State power existed until Congress acted, by necessary implication, refute the contention that a regulation of the subject, confined to interstate commerce, when adopted by Congress, would be necessarily void, because the regulation of the relation of master and servant was, however intimately connected with interstate commerce, beyond the power of Congress. And a like conclusion also persuasively results from previous rulings of this Court concerning the act of Congress known as the Safety Appliance Act. *Johnson v. Southern Pacific Co., 196 U. S. 1; Schlemmer v. Buffalo, Rochester, &c, Ry., 205 U. S. 1.*" (Italics ours.)

We know that interstate traffic is transported by a railway by *trains*. It is not transported by a single car at a time. The same may be said of intrastate traffic. Therefore, the train is the unit of this movement. The unit is indivisible. The Federal power must be supreme and exclusive. Every other car in the train in question was carrying interstate traffic. The train itself was interstate, and the employes were moving from State to State. The Federal statute was made for their protection, the same as if every car in the train were carrying interstate traffic.

The Federal act is a regulation of commerce. The State act, in the same words, can be no less than a regulation, and is therefore void. It is not a similar statute to

those of Alabama and Arkansas, which are said to be "in aid" of commerce previous to the action of Congress upon the same subject-matter. What does "in aid" mean, as applied to those statutes? As we understand it, those statutes provided a duty or condition to be performed hitherto unknown to any law. The Alabama act said certain employes should be examined for color blindness, etc. The New York statute provided how cars should be heated. It was the provision for heating that was "an aid" to commerce. The penalty part of the statute was not the "aid." The penalty suggested no idea to make transportation safer. The penalty was merely for the enforcement of the idea and provisions of the statute preceding the penalty. Penalties add nothing except for the enforcement and execution of laws.

Now what "aid" does the Indiana act give to the Federal act? Does it suggest any provision for safety or provide any additional duty not in the Federal act? The Federal act was first in existence and was being enforced as to cars under the same conditions and circumstances as the one in question. At and before the time the State act was passed it was the duty of the Railroad Commission of Indiana to inform and present to the Interstate Commerce Commission all matters within the State of Indiana having to do with interstate commerce. What "aid" did the Federal act need, or is it only an aid to the enforcement of the Federal act, and by way of keeping the money at home? The effect upon the railroads can be no more than if the penalty provided by the Federal act equaled the sum of the amounts provided by each statute. The aid, then, is money. The Legislature of Indiana was so busy in providing aids, and helping the general govern-

ment to enforce its penal statutes, that it forgot to repeal an existing act upon the same subject-matter by which the prosecuting attorney of Dubois County may proceed.

If Congress has the exclusive power to regulate interstate commerce and its instrumentalities, then it is idle to say that the State may enforce its act. Exclusive power can mean but one thing. The State can have no concurrent power to enforce a penalty where the subject-matter is under the exclusive control of Congress, unless there be an act of Congress conferring concurrent jurisdiction upon the State courts. Congress has not left the States free to provide the penalty in question. On the contrary, it has provided that this penalty be recovered in a United States court.

The power to regulate being exclusively in Congress, it is impossible for a State to provide the slightest regulation upon a subject that has been, previously, definitely and fully covered by Congress.

We respectfully submit that it is clear, from the authorities which we have cited above, that the car in question was included within the domain of the Safety Appliance Act of Congress. Being so included, it could not at the same time be subject to State regulation.

In *Reid v. Colorado, 187 U. S. 146*, it is said:

> "It is quite true, as urged on behalf of the defendant, that the transportation of live stock from State to State is a branch of interstate commerce and that any specified rule or regulation in respect of such transportation, which Congress may lawfully prescribe or authorize and which may properly be deemed a regulation of such commerce, is paramount throughout the Union. So that when the entire subject of the transportation of live stock from one State to another is taken under direct national supervision

> and a system devised by which diseased stock may be excluded from interstate commerce, all local or State regulations in respect of such matters and covering the same ground will cease to have any force, whether formally abrogated or not; and such rules and regulations as Congress may lawfully prescribe or authorize will alone control. (Omitting authorities.) The power which the States might thus exercise may in this way be suspended until national control is abandoned and the subject be thereby left under the police power of the States."

In the case of *The Roanoke, 189 U. S. 198*, an act of Wisconsin which gave a lien upon foreign vessels, was held unconstitutional because it was an invasion of the exclusive jurisdiction of the Federal authority in maritime cases. In the course of its opinion the Court said:

> "In the very recent case of *Easton v. Iowa, 188 U. S. 220*, it was held that a State law punishing presidents of banks receiving deposits of money at a time when the bank was insolvent, and when such insolvency was known to them, was unconstitutional as applied to national banks whose operations were governed exclusively by acts of Congress. Said Mr. Justice Shiras (p. 231): 'But we are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities.' (Omitting authorities.) Although it is equally true that where Congress, having the power, has exercised it but incidentally, and obviously with no intention of covering the subject, the States may supplement its legislation by regulations of their own not inconsistent with it."

In *Mondou v. N. Y. N. H. & H. R. Co., 223 U. S. 1*, it is said (p. 54):

"True, prior to the present act, the laws of the several States were regarded as determinative of the liabilty of employers engaged in interstate commerce for injuries received by their employes while engaged in such commerce. But that was because Congress, although empowered to regulate that subject, had not acted thereon, and because the subject is one which falls within the police power of the States in the absence of action by Congress (citing cases). And now that Congress has acted, the laws of the States, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is. * * *

"When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all."

Again, this Court said, in *Southern Ry. Co. v. Reid, &c., 222 U. S. 444* (at page 447):

"We have shown in the opinion in No. 487 that there need not be directly 'inhibitive congressional legislation,' but congressional legislation which occupies the field of regulation and thereby excludes action by the State."

In *Northern Pacific Ry. Co. v. Washington, 222 U. S. 370*, it was held that Federal statutes regulating interstate commerce are exclusive; that the "same field" means the field of interstate commerce.

From *Michigan Central R. R. Co. v. Vreeland, 227 U. S. 59*, we quote (pages 65, 66 and 67):

"We think the act declares two distinct and independent liabilities. * * *

"We may not piece out this act of Congress by resorting to the local statutes of the State of procedure or that of the injury. The act is one which relates to the liability of railroad companies engaged in interstate commerce to their employes while engaged in such commerce * * *.

"By this act Congress has undertaken to cover the subject of the liability * * *.

"This exertion of a power which is granted in express terms must supersede all legislation over the same subjects by the States * * *.

"But unless this Federal statute which declares the liability here asserted provides that the right of action shall survive the death of the injured employe, it does not pass to his representative, notwithstanding State legislation."

And again, we quote from *Chicago, R. I. & P. Ry. Co. v. Hardwick Farmers Elevator Co., 226 U. S. 426* (at page 435):

"As legislation concerning the delivery of cars for the carriage of interstate traffic was clearly a matter of interstate commerce regulation, even if such subject was embraced within that class of powers concerning which the State had a right to exert its authority in the absence of legislation by Congress, it must follow, in consequence of the action of Congress to which we have referred, that the power of the State over the subject-matter ceased to exist from the moment that Congress exerted its paramount and all-embracing authority over the subject. We say this because the elementary and long-settled doctrine is that there can be no divided authority over interstate commerce, and that the regulations of Congress on that subject are supreme. It results, therefore, that in a case where, from the particular nature of certain subjects, the State may exert authority until Congress acts, under the assumption that Congress, by inaction, has tacitly authorized it to do so, action by Congress destroys the possibility of such assumption, since such action, when exerted, covers the whole field, and renders the State impotent to deal with a subject over which it has no inherent, but only permissive, power. *Southern Ry. Co. v. Reid, 222 U. S. 424.*"

In all the cases decided since the *Mondou* case this Court has held the Federal Employers' Liability Act to be exclusive.

In *Seaboard A. L. R. Co. v. Horton, 233 U. S. 492*, this Court said (pp. 499 and 503):

> "At the outset we observe that the judge evidently misapprehended the effect of the Federal act upon State legislation. * * * For it is not to be conceived that, in enacting a general law for establishing and enforcing the responsibility of common carriers by railroad to their employes in interstate commerce, Congress intended to permit the legislatures of the several States to determine the effect of contributory negligence and assumption of risk, by enacting statutes for the safety of employes, since this would in effect relegate to State control two of the essential factors that determine the responsibility of the employer."

In *St. Louis, I. M. & S. Ry. Co. v. Hesterly, 98 Ark. 240*, the Supreme Court of the State of Arkansas held that the Federal Employers' Liability Act was only supplementary to the State act, and that the judgment could be upheld under the State law. But that case was reversed by this Court and the Federal act held to be exclusive (*228 U. S. 702*).

The last case by this Court upon the question involved is that of *Atlantic Coast Line Railroad v. State of Georgia, 234 U. S. 280*, where it was held that the statute of the State of Georgia requiring headlights upon locomotive engines, was not invalid, for the reason that Congress had passed no act upon that particular subject. In that case this Court said (pp. 293 and 294):

> "But it is manifest that none of these acts provides regulations for locomotive headlights. * * * It does not appear, however, either that Congress has acted, or that the Commission, under the authority of Congress, has established any regulation so far as headlights are concerned. As to these, the

> situation has not been altered by any exertion of Federal power, and the case stands as it has always stood, without regulation, unless it be supplied by local authority. * * * The intent to supersede the exercise of the State's police power with respect to this subject can not be inferred from the restricted action which thus far has been taken."

The following language from the same case (p. 292) is very significant of what the decision in the Georgia headlight case would have been had Congress acted upon that particular subject:

> "* * * if there appears to be need of standardization of safety appliances, and of providing rules of operation which will govern the entire interstate road, irrespective of State boundaries—there is a simple remedy; and it can not be assumed that it will not be readily applied if there be real occasion for it."

It will therefore be seen that Congress, long before the Indiana statute was passed, had found need of standardization of safety appliances, and had passed the act upon the particular subject at hand, to the exclusion of the Indiana statute.

Further speaking of that remedy, this Court said (p. 292):

> "* * * but it does lie in the exercise of the paramount authority of Congress, in its control of interstate commerce, to establish such regulations as, in its judgment, may be deemed appropriate and sufficient. Congress, when it pleases, may give the rule and make the standard to be observed on the interstate highway."

The Supreme Courts of the States of Indiana and Ohio (the former, in the case at bar, and the latter, in the case of *Detroit, T. & I. Ry. v. State, supra*), held that the Federal Safety Appliance Act was not exclusive.

Since the numerous decisions of this Court holding that the Federal Employers' Liability Act and other similar acts are exclusive, the Supreme Court of Ohio, in the case of *Erie R. Co. v. Welsh, 105 N. E. 189*, has so held, saying, at p. 190:

> "An act of Congress, in so far as it covers any subject-matter upon which Congress has the right to legislate, supersedes the statutes of a State, and therefore, if the defendant in error was, at the time he sustained the injuries described in his petition, engaged in interstate commerce, then the Federal Employers' Liability Act of 1908 applies to this case, and the provisions of that act entirely supersede the State statutes in relation to the rights and liabilities of the parties to this suit."

So, also, the Supreme Court of Indiana, in the case of *Wabash R. Co. v. Priddy, 101 N. E. 724 (Sup. Ct. Ind. 1913)*, held that the interstate commerce act superseded the statutes of Indiana passed in 1905, which statute regulated the pleading and proof in actions against common carriers, saying (pp. 728 and 729):

> "Congress has by the interstate commerce act covered the entire field of rates and rate making as to interstate commerce, and superseded State legislation on that subject; hence no others can be prescribed by or controlled by the States, nor can contracts with respect to such rates be the subject of States' legislation. * * * It is not improper to suggest here that, where the Supreme Court of the United States has declared a rule applicable to any case arising under our interstate commerce laws, State courts are bound by the rule declared and must follow it."

Again, the Supreme Court of Indiana, in *Southern Ry. Co. v. Howerton, 105 N. E. 1025 (Sup. Ct. Ind. 1914)*, held the Federal Employers' Liability Act to be exclusive

and to supersede the State statute where the employer and the employe were engaged in interstate commerce. The court said (p. 1028):

> "Neither can there be any question under the decisions of the Supreme Court of the United States, construing the Federal Employers' Liability Act of April 22, 1908, 35 Stat. 65, c. 149, and the amendment of April 5, 1910, 36 Stat. 291, c. 143 (U. S. Comp. St. Supp. 1911, p. 1324), that the act supersedes the State laws in the respects which the Federal act embraces. That the act is necessarily exclusive in the field to which it is addressed irresistibly appears when it is considered that no cause of action or remedy can arise under the common law which is not preserved and embraced within the Federal act, which embraces every common-law right and remedy which can, under any circumstances, arise, so far as employers engaged in interstate commerce are concerned, and goes much further, except possibly as to the question of assumption of risk, and negligence as qualified by sections 3 and 4 of the act."

It might well be inferred that if either the Supreme Court of Indiana or the Supreme Court of Ohio were called upon again to decide the question at bar, its decision would be different from the one now being questioned.

Upon the questions herein raised and the authorities cited we pray that the judgment of the Supreme Court of Indiana and that of the Superior Court of Vanderburgh County, State of Indiana, be reversed, and the answer in question held sufficient.

All of which is respectfully submitted.

ALEXANDER P. HUMPHREY,
EDWARD P. HUMPHREY,
JOHN D. WELMAN,
Counsel for Plaintiff in Error.

APPENDIX.

"SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That it shall be unlawful for any common carrier engaged in moving traffic by railroad between points within this State to use on its line any locomotive in moving such traffic not equipped with power driving wheel brakes and appliances for operating the train brake system, or to run any train in such traffic that has not seventy-five per centum of the cars in such train equipped with power or train brakes, and having the brakes used and operated by the engineer of the locomotive drawing such train, and all power brake cars in such train shall be associated together and have their brakes used and operated: *Provided*, That this section shall not apply to the handling of trains or cars in yard service, or to a local train while engaged in performing switching service.

"SEC. 2. That it shall be unlawful for any such common carrier to haul, or permit to be hauled or used on its line, any locomotive, car, tender or similar vehicle used in moving State traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

"SEC. 3. That it shall be unlawful for any such common carrier to haul, or permit to be hauled or used on its line, any locomotive, car, tender, or similar vehicle used in moving of State traffic not provided with secure grab irons or hand-holds in the sides or ends thereof.

"SEC. 4. That it shall be unlawful for any such common carrier to use any locomotive, tender, car, or similar vehicle used in the movement of State traffic, that is not provided with draw bars of standard height, to-wit, standard gauge cars 34½ inches; narrow gauge cars 26 inches; measured perpendicularly from the level of the tops of the rails to the centers of the draw bars; the maximum variation from such standard heights between draw bars of empty and loaded cars shall be 3 inches.

"SEC. 5. That the provisions of section(s) 1, 2, and 4 of this act shall also apply to locomotives, cars and trains used in passenger traffic between points within this State, in so far as the same are applicable to the vehicles used in passenger train traffic: *Provided*, That none of the provisions of sections 1, 2, 3, and 4 of this act shall apply to any street railroad, interurban or suburban street railroad.

"SEC. 6. That it shall be unlawful for any common carrier in this State operating an interurban railway by electric power to operate or run upon any railroad in this State any motor car used in regular interurban passenger traffic which is not equipped with an approved power air brake, in good condition, and subject to the control and operation of the motorman in charge of such car, and of sufficient capacity to control the speed of the car.

"SEC. 7. The Railroad Commission of Indiana may, from time to time, after full hearing and for good cause shown, increase the minimum percentage of cars in any train required to be operated by power or train brakes, and a failure to comply with any such requirement of said commission shall be subject to a like penalty as a failure

to comply with any requirement of this act. The said Railroad Commission of Indiana is hereby authorized to grant to any common carrier, subject to this act, upon full hearing and for good cause shown, a reasonable extension of time in which to comply with the provisions of this act: *Provided*, That in no case shall such extension, or extensions, in the aggregate, exceed the period of eighteen months from and after the approval of this act.

"SEC. 8. That any such common carrier may refuse to receive from its connecting lines, or from any shipper, any car not equipped in accordance with the provisions of this act.

"SEC. 9. It is hereby made the duty of the Railroad Commission of Indiana to enforce the provisions of this act, and it is hereby authorized, with the consent and approval of the Governor, to appoint and pay an inspector, or inspectors, to assist in so doing and in collecting the necessary information required for that purpose, and such commission may adopt and promulgate all needful rules and regulations, not inconsistent with this act, to control the conduct of its inspectors and such carriers in reference to this act and such inspection. All carriers subject hereto shall provide free transportation, good in this State, for the inspectors employed by said commission to be used only while traveling on the business of the commission.

"SEC. 10. That every such common carrier, or the receiver thereof, using, or permitting to be used or hauled on its line, any locomotive, tender, car, or similar vehicle or train, in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each violation, to be recovered in a suit or suits to be brought

by and in the name of the Railroad Commission of Indiana for the use of the State of Indiana in any circuit or superior court of this State having jurisdiction over any such offending carrier: *Provided*, That nothing in this act contained shall apply to locomotives, tenders, cars, or trains, exclusively used in the movement of logs, and when the height of the draw bars on such locomotives, tenders, and cars does not exceed 25 inches, or to locomotives, tenders, cars, similar vehicles or trains while any of which are in actual use in interstate commerce."

Sections 11, 12, 13, and 14 of this act relate to railroad structures, and to penalties and liabilities. Section 15 repeals all laws in conflict with this act. Sections 1 to 10 have been carried into Burns' Annotated Indiana Statutes (Revision of 1914) as Sections 5278 to 5287, inclusive.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 107.

SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,

v.

RAILROAD COMMISSION OF INDIANA,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

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SUBJECT INDEX.

TABLE OF CASES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 440.

SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,

v.

RAILROAD COMMISSION OF INDIANA,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

The Safety Appliance Act passed by Congress March 2, 1893, and amended April 1, 1896, provides how interstate carriers shall equip cars engaged in the service, and by the amendment of March 2, 1903, provides that the act shall apply to trains, locomotives, tenders, cars and similar vehicles used on railroads engaged in interstate commerce and used in connection therewith.

The Safety Appliance Act by the State of Indiana was passed March 8, 1907, and applies only to common carriers engaged in traffic within the State and only to locomotives, tenders, cars or similar vehicles carrying intrastate freight.

Plaintiff in error assigns error to the Supreme Court of the State of Indiana in affirming the action of the Superior Court of Vanderburgh County, in

the State of Indiana, which rendered judgment in favor of defendant in error against plaintiff in error for the penalty provided for by section ten (10) of the Indiana act.

CONTENTION OF PARTIES.

In this court plaintiff in error takes the position that the State of Indiana has surrendered its right to exercise its police power with reference to any regulation of any car doing a purely intrastate business, if it is being handled by a common carrier engaged in interstate traffic, justifying this contention only by the commerce clause of the Federal Constitution which provides that "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

The contention of defendant in error is that the state statute in question does not undertake to regulate interstate commerce, nor to interfere with the regulation thereof by Congress, but that all the state statute undertakes to do is to regulate to some extent the equipment of cars moving intrastate traffic. The act does not attempt to extend or operate beyond the limits of the State, nor to interfere with nor regulate in any way cars loaded with interstate freight. That the enactment of the statute is but the exercise of the police power of the State and not only does not interfere with the act of Congress but is in aid thereof. Also that Congress can no more interfere with intrastate commerce than the States can interfere with interstate commerce.

ARGUMENT.

"Commerce" means the exchange of property and includes the usual agencies of communication and transportation to effect the exchange.

"Interstate commerce" is the exchange of property in one State for property in another State, and its essential characteristic is that it involves the moving of property from one State to another.

"Intrastate commerce" is the moving of property wholly within the State.

With interstate commerce Congress has to do, regulates and controls it. Intrastate commerce is under the dominion of the respective States and over it Congress has no dominion and no jurisdiction. So long, therefore, as the Federal Government and the States keep within their respective rights, there can be no interference within the meaning or spirit of the law.

Section one (1), of the state act limits the application of the act to "common carriers moving traffic by railroad between points within the state" and the locomotive referred to in the section is a locomotive "moving such traffic."

Section two (2) refers to "such common carrier" and limits the instrumentalities to "locomotives, cars, tenders or similar vehicles used in moving state traffic."

Sections three (3), four (4) and five (5) contain the same limitations as section two (2).

Section ten (10) provides a penalty of one hundred dollars, with the proviso "that nothing in this act contained shall apply to locomotives, tenders,

cars, similar vehicles, or trains *while any of which are in actual use in interstate commerce.*" (Our italics.)

The above sections are the only ones applicable in the suit at bar.

The federal act of 1893 pleaded by plaintiff in error applies only to "common carriers engaged in interstate commerce" as provided in the title and section one (1).

Section two (2) providing for certain couplers, section four (4) providing for certain grab irons, or handholds, are both limited to common carriers engaged in interstate commerce and to cars used in moving interstate traffic—meaning, of course, moving interstate traffic at the time.

Section three (3) provides that such carrier may lawfully refuse to receive from any connecting line any car not equipped with couplers described.

Section six (6) provides far a penalty of one hundred dollars.

The above sections are the only ones which have any connection with the involved controversy.

The amendment of 1896 has also two limitations, viz:

(a) Common carrier engaged in interstate commerce, and

(b) Locomotive engine in moving interstate traffic.

The amendment of 1903 makes the act "apply to common carriers by railroads in the Territories and the District of Columbia and shall apply to all trains, locomotives, tenders, cars and similar ve-

hicles used on any railroad engaged in interstate commerce, and to all other locomotives, tenders, cars and similar vehicles used in connection therewith."

Thus it will be seen that Congress has very studiously prohibited the act applying to any car not engaged in moving interstate traffic, or used in connection therewith; and the language "used in connection therewith" has reference to the handling, *en route*, of interstate traffic, because the federal act, by express provision in section three (3), makes it lawful for the interstate carrier to refuse to accept from any connecting line any car not properly equipped.

This provision aids materially in construing the words, "used in connection therewith."

The federal amendment of April 14, 1910, though passed subsequent to the acts involved at bar and hence having no application here, is very suggestive.

Congress must have known and recognized that its prior acts and amendments, did not include a car loaded with state freight only, because of the limitations in the acts and amendments above referred to, for section two (2) of the 1910 amendment includes any car hauled or used on the line of the interstate carrier, and there is absent the provision that the car must be moving interstate traffic or used in connection therewith.

Section three (3) and four (4) of the 1910 amendment include the same car.

Congress must have had the idea that it had the right to legislate, but had not in fact legislated, with

reference to all cars while in charge of an interstate carrier.

Defendant in error therefore earnestly contends that up to the 24th day of February, 1910, the time of the violation complained of, there was no federal statute which so much as attempted to include within its provisions a car loaded with and handling intrastate freight exclusively.

The language used in the 1903 amendment making it apply to all cars used on any railroad engaged in interstate commerce, does not have the broad and comprehensive meaning claimed for it by plaintiff in error, as this would be tantamount to saying that if the road is used in interstate commerce the state statute would not apply, even though the entire train, including locomotive and crew, were doing, at the time, an exclusively intrastate business; for it must be conceded that even though a railroad company does an interstate business, it may also engage in commerce wholly within a State and while so doing no one would deny that it is answerable to the law of that State.

PLAINTIFF IN ERROR WAS ENGAGED IN BOTH INTERSTATE COMMERCE AND COMMERCE WITHIN THE STATE.

A train and train crew cannot be doing exclusively an interstate business where it is shown that it is at the time handling intrastate freight; and especially is this true where it is shown and conceded that one car in the train was loaded with intrastate freight exclusively and billed from a point to a

point within one State. The mere fact that the railroad company and its train crew is doing an interstate business, does not prevent it from engaging also, and at the same time, in intrastate commerce.

The language in the 1903 amendment: "shall be held to apply to all trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce" must mean that the railroad at the time is engaged exclusively in interstate commerce, for it cannot be engaged in intrastate commerce without answering the requirements of the state statute.

In the case of Missouri Pacific Railway Company v. Larabee Flour Mills Company, 211 U. S. 612, Justice Brewer, writing the opinion, says:

> "The roads are, therefore, engaged in both interstate commerce and that within the State. In the former they are subject to the regulation of Congress, in the latter to that of the State, and to enforce the proper relation between Congress and the State, a full control of each over the commerce subject to its dominion must be preserved.
>
> "Running through the entire argument of counsel for the Missouri Pacific, it is thought that the control of Congress over interstate commerce and the delegation of that control to a commission necessarily would take from the State all power in respect to regulation of a local character. This proposition cannot be sustained."

In Luken v. Lake Shore, etc., Co., 94 N. E. 175, Justice Farmer, speaking for the Supreme Court of Illinois, uses this language:

"The proof shows the car was being moved from defendant's yards at Park Manor to the Union Stockyards, both of said points being within the State of Illinois. While it is true defendant's railroad is an interstate road and defendant is engaged in interstate traffic, it is also engaged in intrastate traffic. What point the car in question came from and to what point it may have been finally destined to be hauled does not appear from the proof, but at the time the injury occurred the car was being hauled from one point in Illinois to another point in the same State. It was an empty car, but the law applies as well to empty cars as to loaded cars. The character of the traffic the car was being used for at the time of the injury is to be determined from the proof as to the points between which the car was being moved at the time, whether the road over which the car was being moved was an interstate road and whether the car was sometimes used in interstate traffic or not. * * * If the places from which and to which passengers and property are carried, and the line over which they are carried, are within the State, then the commerce is domestic and is subject to state control. The transportation of property between points within a State by a railroad engaged in interstate traffic does not of itself determine the character of the traffic and make it interstate commerce. It is not the character of the road by which property is transported, but the character of the traffic, that determines whether or not it is interstate or intrastate commerce. Congress may enact laws requiring all railroads engaged in in-

terstate commerce to equip their cars with safety appliances, but the exercise of that power does not preclude a State from enacting laws requiring all roads engaged in intrastate commerce to equip their cars with safety appliances. The fact that some roads may be engaged in both interstate and intrastate commerce does not prevent the State from adopting such regulations as it may deem proper to provide for the safety of men engaged in carrying on intrastate commerce, if such regulations are not inconsistent with or repugnant to the acts of Congress adopted for the regulation of railroads engaged in interstate commerce." (Citing authorities.)

WHAT ARE THE RESPECTIVE POWERS OF THE STATE AND FEDERAL GOVERNMENT?

Congress has such power as has been delegated to it by the States and all power not granted by the States is reserved to the States. The States are prohibited from legislating upon only those subjects which they have delegated, or which would interfere with the rights delegated. If the state statute in question is not a reguation of interstate commerce, then it is not in contravention of or opposed to the right of Congress and therefore not in violation of the commerce clause.

Smith v. Alabama, 124 U. S. 465;
Hennington v. State of Georgia, 163 U. S. 299;
Gibbons v. Ogdon, 22 U. S. 9;
People v. Chicago, etc., Co., 79 N. E. 144.

In conferring upon Congress the regulation of commerce between the States, it was never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country; this right being reserved to the States in the exercise of their police powers.

Smith v. Alabama, supra;
Hennington v. State of Georgia, supra.

Congress does not confer rights upon the State, but the States give to Congress all the power which it has. Even though the States have conferred upon Congress the right to regulate interstate commerce, they have not thereby denied themselves the right to enact such statutes as in their opinion are enforcements of the police powers of the State exercised in the futherance of the safety of the lives and limbs of the people in the State. This right, as has been held in a number of decisions from the United States Supreme Court, is still with the States, even though the statute might indirectly affect interstate commerce. The tenth amendment to the Constitution of the United States is that powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively or to the people.

It is not so much a question of whether the full and rigid enforcement of the state statute might indirectly or to some degree affect interstate commerce, as it is a question of whether the enactment

of the statute is an exercise of the police power of the State.

There is a vast difference between a statute which might remotely affect interstate commerce and one which regulates interstate commerce. The former would not be void if it comes within the exercise of the police powers of the State; while the latter would be void, since Congress alone has the right to regulate interstate commerce.

And so it might be conceded for the argument that the statute in question does affect, in some degree, interstate commerce; yet, it is a valid exercise of the inherent and reserved powers of the State, if (a) it does not regulate interstate commerce, (b) if it is a reasonable exercise of the police power of the State, and (c) if the act in question is in aid of the federal statute and not in opposition to it.

THE STATE STATUTE IN QUESTION IS PASSED IN THE EXERCISE OF THE POLICE POWER OF THE STATE.

The title and every section of the state act limit its application and enforcement to railroad companies engaged in intrastate commerce and to cars handling intrastate freight.

Section ten (10) of the act, which is the section providing for the penalty (the collection of which is here involved), provides:

> "That nothing in this act contained shall apply to locomotives, tenders, cars or trains, * * * while any of which are in actual use in interstate commerce."

A statute of a State and an act of Congress on the same subject may be enforced in pursuance of a common purpose to afford a remedy.

> Voelker v. Chicago, etc., Co., 116 Fed. 867-873.

If a railroad company is engaged in both interstate and intrastate commerce, this does not prevent the State from adopting such regulations as it may deem proper to provide for the safety of its citizens.

> People v. Chicago, etc., Co., 220 Ill. 581;
> People v. Erie R. R. Co., 198 N. Y. 369;
> Missouri, etc., Co., v. Haber, 169 U. S. 613;
> Reid v. Colorado, 187 U. S. 137;
> 2 Elliott on Railroads, 690;
> 4 Elliott on Railroads, 1671;
> Missouri, etc., Co., v. Kansas, 216 U. S. 262.

In passing upon a statute identical with the state act here involved the Supreme Court of Ohio, in Detroit, etc., Co., v. State, 91 N. E. 869, says:

> "The statute in question does not purport to be a regulation of interstate traffic, but is limited strictly to the moving of traffic from one point to another in the State, and it is evident from its various requirements as well as its title, that it was passed in the exercise of the police power of the State to promote the safety in the State of employes and travelers upon railroads, and without any thought or intention of meddling with interstate commerce."

In the same decision, quoting from Chicago, etc., Co., v. Voelker, 129 Fed. 522, the following appears:

> "The two statutes, federal and state, seem to have been enacted in pursuance of a common purpose to afford a remedy as broad as the mischief, and to remove the source or cause of the latter, through the compulsory adoption and use of a new system of coupling and uncoupling which dispensed with the necessity of any one going between, or at least directly between, the cars."

Continuing, the Illinois Supreme Court says:

> "Our statute does not conflict with the federal statute in the character of the coupler required, but requires the same kind of coupler, and was passed to promote the same object, though under a different power, and, while no doubt it was enacted to apply to cases assumed not to be covered by the federal statute, it is not unreasonable and is not void merely because a failure to equip the car with automatic couplers would subject the railroad company to punishment under a state statute as well as under the act of Congress. The same act or series of acts may constitute an offense equally against the United States and the State, subjecting the guilty party to punishment under the laws of each government. (Cross v. North Carolina, 132 U. S. 131.) The regulation of commerce among the States is within the exclusive jurisdiction of Congress, but it is well settled that a state statute enacted in the exercise of its police power, not regulating or directly affecting interstate commerce or in conflict with

federal regulations, but merely regulative of the instrumentalities of commerce, is not void; and when such state regulations do conflict with federal regulations, they are not void on the ground that the State has exercised a power exclusively in Congress, but because the Constitution and the laws of the United States made in pursuance thereof are the supreme law of the land."

THE STATE STATUTE IN QUESTION HAS NOT BEEN SUPERSEDED.

When Congress acts the state laws are superseded only to the extent that they affect commerce outside of the State as it comes within the State.

Hall v. DeCuir, 95 U. S. 485.

"It should never be held that Congress intends to supersede, or by its legislation suspend the exercise of, the police power of the State, even when it may do so, unless its purpose to affect that result is clearly manifested.

Reid v. Colorado, 187 U. S. 137.

"In practical application and for the purposes for which the acts are intended, the safety of employes, it is immaterial whether the train operatives are citizens of the State or not. The fact that they may be is sufficient to indicate that it is not the state of citizenship of the employes in a train which is the test of validity or invalidity. The State has the right and the power to protect not only its

own citizens, but citizens of another State when within its borders."

The above quotation is found in the decision of the case at bar by the Supreme Court of Indiana, in 100 N. E. page 337, at 342, citing in support thereof the following cases:

N. Y., etc., Co., v. New York, 165 U. S. 628;
Morgan Steamship Co., v. Louisiana Board of Health, 118 U. S. 455;
Compagnie, etc., Co., v. State Board, 186 U. S. 380;
Barbier v. Cormolly, 113 U. S. 27.

THE STATE STATUTE IS NOT INVALID UNLESS IT IS REPUGNANT TO THE ACT OF CONGRESS.

Railroad companies doing an interstate business take their charters subject, necessarily, to the condition that they will conform with such reasonable regulations as the State may, from time to time, establish that are not in violation of the supreme law of the land.

Lake Shore, etc., Co., v. Ohio, 173 U. S. 285.

The police power of the State can be properly exercised to insure a faithful and prompt performance of duty within the limits of the State upon the part of railroad companies or other common carriers engaged in interstate commerce, and this is especially

true in respect to laws enacted by the state for the safety of persons and property, such regulations being regarded as in aid of commerce and are generally considered with special favor by the courts.

Pittsburg, etc., Co., v. State, 172 Ind. 147;
Chicago, etc., Co., v. Solan, 169 U. S. 133;
Missouri, etc., Co., v. Haber, 169 U. S. 613.

In order to prevent the state statutes from being enforced on account of a regulation by Congress, the state statute must be in conflict with the federal act and its enforcement must be an interference with the enforcement of the federal act.

Pittsburg, etc., Co., v. State, supra.

A state statute is not invalid because of a federal statute on the same subject, unless the state statute is repugnant to the federal statute.

People v. Erie R. R. Co., 198 N. Y. 369;
Gulf, etc., Co., v. Hefley, 158 U. S. 98;
Hennington v. Georgia, 163 U. S. 299;
New Orleans, etc., Co., v. Mississippi, 133 U. S. 587;
Minneapolis, etc., Co., v. Emmonds, 149 U. S. 364.

In order that a state law or the action of state authorities under such law should be construed a regulation of commerce between the States, the operation of such law or the action of such state authorities must be a direct interference or regulation and directly or substantially hurtful to such com-

merce, not a mere incidental or casual interruption or regulation or remotely hurtful.

Sherlock v. Alling, 93 U. S. 99;
Louisville, etc., Co. v. Kentucky, 183 U. S. 503;
New York, etc., Co., v. Pennsylvania, 158 U. S. 431;
Henderson Bridge Co., v. Kentucky, 166 U. S. 150;
Louisville, etc., Co., v. Kentucky, 161 U. S. 677;
Nashville, etc., Co., v. Alabama, 128 U. S. 96.

The attachment and garnishment laws of the State can be enforced against an interstate carrier doing an interstate business and against the cars engaged in interstate commerce, and this is not a regulation of, nor an interference with interstate commerce and is therefore not repugnant to the federal statutes.

Davis v. Cleveland, etc., Co., 217 U. S. 157.

In Davis v. Cleveland, etc., Co., supra, it is said that a car cannot by being engaged in interstate business, be set apart "in a kind of civil sanctuary", and that the state statute may be enforced, although the act of Congress provides for attachment, or other process before judgment, and by execution or otherwise after judgment.

The plaintiff in error cannot escape its liability under the state statute by attaching the car in question to an interstate train; for if the state statute, under

any conditions, could apply to the car in question, then this liability rested and remained with the car during the entire time that it was loaded with and carrying intrastate traffic. If the plaintiff in error saw fit to attach an intrastate car to interstate cars and thus perhaps make it liable also to the federal statute, the car was not thereby relieved from the burdens placed upon it by the state statute.

The plaintiff in error, being engaged in both interstate commerce and in commerce within the State, cannot at will shift its liability and determine for itself whether it should be regulated by the one or the other statute. If the state statute applies to the car as described in the answer of the plaintiff in error, it is not within the power of the plaintiff in error to escape liability by any act of its own. The only way it can avoid the penalty prescribed by the state statute is to see to it that the cars which it handles in doing business wholly within the State, whether owned by it or any other company, are equipped as the state statute requires.

The case of Missouri, etc., Co. v. Haber, supra, holds that a state statute can be enforced which is not inconsistent with an act of Congress and that this right is one of the reserved powers of the State, and the existence of a federal statute will not interfere with the enforcement of the state statute, unless the latter is repugnant to the former to such an extent that the two cannot be reconciled or stand together, or that a compliance with one would amount to a violation of the other.

This case upholds the power of the State of Kan

sas to enforce its statutes against shipping into the State diseased cattle without certain inspection provided for by the Kansas legislature, and the holding is to the effect that even though Congress had provided for the establishment of a bureau of animal industry and for the appointment of a chief thereof, and practical stock raisers or experienced men familiar with the questions pertaining to commercial transactions in live stock, whose duty it should be to investigate the condition of domestic animals of the United States, this act does not prevent the State enacting and enforcing a law which is not repugnant to the federal statute.

The Justice writing the opinion in the last case cited, says:

> "The statute of Kansas involved was not to be deemed a regulation of commerce among the States simply because it incidentally or indirectly affected such commerce; and although the power of Congress to regulate commerce among the States and the power of the States to regulate their purely domestic affairs are distinct powers, which in their application may, at times, bear upon the same subject, no collision that would disturb the harmony of the national and state government or produce any conflict between the two governments in the exercise of their respective powers need occur, unless the national government acting within the limits of its constitutional authority, takes under its immediate control and exclusive supervision the entire subject to which the state legislature may refer. The state law is in aid of the ob-

jects which Congress had in view when it passed the Animal Industry Act. It was passed in execution of a power which the State did not part with when entering the Union, namely, the power to protect the people in the enjoyment of their rights of property and to provide for the redress of wrongs within its limits."

In Voelker v. Chicago, etc., Co., supra, it is said:

"Legislation on this matter of the use of automatic couplers was sought and obtained from Congress, as well as from the state legislature, so that the companies would not be afforded a loophole to escape from the liability on the theory that the agencies used in interstate commerce are without the control of the state legislature."

So long as the action of the State is not repugnant to, or does not interfere with, or place burdens upon, or undertake to regulate, interstate commerce, or is a mere police regulation, its action, though in aid of interstate commerce, is not invalid, unless it is a direct interference.

Savage v. Jones, 225 U. S. 501;
Standard, etc., Co., v. Wright, 225 U. S. 540;
United States v. Minneapolis, 223 U. S. 335;
Meyer v. Wells, 223 U. S. 298;
Atchison, etc., Co., v. O'Connor, 223 U. S. 280;
Gladson v. Minnesota, 166 U. S. 427;
Louisville, etc., Co., v. Mississippi, 133 U. S. 587;
Mobile County v. Kimball, 102 U. S. 691.

It is not enough to render the state law invalid that it is similar to the federal statute upon the same subject; it must in operation interfere directly or substantially with interstate commerce, and not be an incidental or casual interference or remotely affect it hurtfully.

United States v. DeWitt, 76 U. S. 41;
Slaughterhouse Cases, 83 U. S. 36;
United States v. Reese, 92 U. S. 214;
Patterson v. Kentucky, 97 U. S. 501;
Sherlock v. Alling, 93 U. S. 99;
New York, etc., Co., v. Pennsylvania, 158 U. S. 431.

"It is very certain that when Congress enacted the interstate commerce law, it did not intend to abrogate the attachment laws of the State. It is very certain that there is no conscious purpose in the laws of the States to regulate, directly or indirectly, interstate commerce. We may put out of the case therefore as an element an attempt of the State to exercise control over interstate commerce in excess of its power. Indeed, the questions in this case might arise upon process issued out of the Circuit Court of the United States under the federal statutes. For by sections 915 and 916 Revised Statutes remedies 'by attachment or other process,' before judgment, and 'by execution or otherwise,' after judgment, are given litigants in common law causes in the circuit and district courts of the United States.

"The questions in the case, therefore, depend for their solution upon the interpretation of federal laws. Are the laws of the

States for the enforcement of debts, and the federal laws which permit or enjoin continuity of transportation so far incompatible that the provisions of the latter must be construed as displacing the former? We do not think so."

Davis v. Cleveland, etc., Co., 217 U. S. 157.

By no possible construction can it be contended that the state statute in any way conflicts with the federal statute. The fact is that the federal statute goes further in its requirements than does the state statute. The state act requires secure grabirons, or handholds in the sides or ends of the cars, while the federal act requires secure grabirons and handholds in the ends and sides of the car.

It is inconceivable, therefore, that the state statute should interfere with the federal statute, when it stops short of the requirements of the federal statute.

BOTH THE STATE AND FEDERAL STATUTES MAY BE ENFORCED.

Where both the State and Congress have made certain acts a violation of the criminal law, the commission of the act may be an offense against, or transgression of, the laws of both, and may be punished in both jurisdictions.

Dashing v. State, 78 Ind. 357;
Snoddy v. Howard, 51 Ind. 411;
Fox v. State of Ohio, 5 Howard, 410;
Moore v. The People, 14 Howard 13.

The grant of power to Congress, by the Constitution, to provide for the punishment of counterfeiting of securities and current coins of the United States, does not, of itself, deprive the States of the right to make such counterfeiting a crime and to punish it accordingly; and if Congress, though providing for the punishment of counterfeiting as a crime against the United States, leaves the States free to make such counterfeiting a crime against them, they may do so.

Dashing v. State, supra.

Notwithstanding the constitutional provision vesting in Congress the power to coin money, regulate the value thereof, and of foreign coin, and to provide for the punishment of counterfeiting of securities and current coins of the United States, the State may pass laws for the punishment of counterfeiting and the jurisdiction of the State is concurrent with that of the federal government.

11 Cyc. 311.

The same act may be an offense against the laws of two different jurisdictions and may be punished in each.

Ambrose v. State, 6 Ind. 351;
State v. Gapin, 17 Ind. App. 524.

Every citizen of the United States is also a citizen of a State or Territory. He may be said to owe allegiance to two sovereigns and may be liable to punishment for an infraction of the laws of either.

The same act may be an offense or transgression against the laws of both; thus an assault upon the marshal of the United States and hindering him in the execution of legal process is a high offense against the United States, for which the perpetrator is liable to punishment and the same act may be also a gross breach of the peace of the State, a riot, assault or a murder, and subject the same person to a punishment under the state law for a misdemeanor or felony. That either or both may punish such an offender cannot be doubted, and it cannot be truly averred that the offender is thus twice punished for the same offense, but only that by one act he has committed two offenses, for each of which he is justly punishable.

For cases holding that one act may constitute an offense against both the state and federal government and that both may punish, see:

Ex parte Siebold, 100 U. S. 371-389;
Cross v. North Carolina, 132 U. S. 131;
Reid v. Colorado, 187 U. S. 137;
Detroit, etc., Co., v. State, 82 Ohio 60, (91 N. E. 869).

A statute of the State and an act of Congress on the same subject may be enforced in pursuance of a common purpose to afford a remedy.

Voelker v. Chicago, etc., Co., supra;
Southern Railway Co., v. Railroad Commission, 100 N. E. 337-341;
In re Loney, 134 U. S. 372;
State v. Kirkpatrick, 32 Ark. 117;

People v. McDonnell, 80 Calif. 285;
United States v. Amy, 14 Md. 152;
State v. Olesen, 26 Minn. 507;
State v. Whittemore, 50 N. H. 245;
People v. Welch, 141 N. Y. 266;
Territory v. Coleman, 1 Or. 191;
State v. Norman, 16 Utah 457;
Smith v. U. S., 1 Wash. T. 262;
People v. White, 34 Calif. 183;
Martin v. State, 18 Texas Appeals 225;
State v. Bordwell, 72 Miss. 541;
Bohannon v. State, 18 Neb. 57;
In re Trueman, 44 Mo. 183;
Smith v. Maryland, 18 How. 71;
Commonwealth v. Ellis, 158 Mass. 555;
People v. Miller, 38 Hun 82.

THE STATE STATUTE IN QUESTION IS IN AID OF THE FEDERAL ACT.

All state statutes which are passed upon the same general questions to bring about generally the same results and which do not conflict with the federal statute, are considered to be in aid of the federal statute. The state statute is not considered to be in conflict with or repugnant to the federal statute, unless the compliance with one will result in a violation of the other, or unless there is a conflict of duty in determining whether the one or the other statute should be followed.

In other words, if the compliance with the one brings about, or results in, a compliance with the other, then there can be no repugnancy; and being no repugnancy, the one must be in aid of the other,

because it is an additional incentive to do that which the law requires.

The purpose of the safety appliance acts both state and federal, is identical. Both are passed for the purpose of minimizing accidents likely to occur to passengers, employees and property. When the state statute requires of railroad companies doing an intrastate business the doing of the same thing required of interstate trains under the federal statute, and providing for the same penalty, then it must necessarily follow that the state statute, having in mind the same purpose, is in aid of the federal statute, since it undertakes to bring about the same conditions and the same results.

In Charles v. Atlantic Coast Line Railroad Company, 78 S. C. 36, an action was brought to recover the value of rice alleged to have been shipped from New Orleans to Timmonsville, S. C., and lost while in possession of the defendant carrier and to recover fifty dollars ($50) penalty for failure to adjust and pay the claim within ninety days as prescribed by the state statute of South Carolina.

The case was appealed from the magistrate to the circuit court and then to the Supreme Court, and each court held the defendant liable under the state statute, and in the opinion reference is made to the case of Seegers Bros. v. Seaboard Air Line, etc., Co., 73 S. C. 71, where it is said:

> "The duty to make prompt settlement for loss or damage to goods is but an incident of the duty to transport and deliver safely and with reasonable diligence. The statute in

question was designed to effectuate an important public purpose, viz., to compel the common carriers to perform, with reasonable diligence, the duty which peculiarly appertains to their business as carriers of freight. The penalty is but a means to that end."

The Court, in the Atlantic Coast Line case, used this language:

"While it is not easy to define the exact limits of the operation of state laws as affecting interstate commerce, we have no hesitation in saying that the statute in question, as it affects carriers doing business in this State who fail or refuse to adjust or pay the loss or damage to goods while in their possession, is no unlawful intereference with interstate commerce, even as applied to the interstate shipment. The penalty imposed is for delict of duty appertaining to the business of a common carrier, and in so far as it may affect interstate commerce, it is an aid thereto by its tendency to promote safety and prompt delivery of goods, or its equivalent—prompt settlement for proper claims for damages. No penalty can attach except upon the establishment in a court of a default of duty imposed by statute. The statute does not attempt to regulate interstate commerce and imposes no tax or burden thereon."

The State may pass regulations as to cars being transported within the State and the reason for so doing is with the legislature, and such regulation is not directed against interstate commerce, nor is it

within the meaning of the Constitution a regulation of commerce; although it controls in some degree the conduct of those engaged in such commerce. So far as it may affect interstate commerce, it is to be regarded as legislation in aid of Congress and enacted under the power remaining with the State to regulate the relative rights and duties of the persons and corporations within its limits.

> New York, etc., Co., v. State of New York, 165 U. S. 638.

This court has not yet refused to carry out and enforce the doctrine that a state statute may be enforced, even though it may indirectly affect interstate commerce, if it is in aid of, and not in conflict with, the federal statute.

Plaintiff in error in its brief calls attention to quite a number of cases holding that state statutes may be enforced as a valid exercise of the police power of the State when they do no more than to remotely and indirectly control the instrumentalities of interstate commerce. State statutes have universally been held valid which are passed in the exercise of the police power of the State when they do not interfere with nor molest interstate commerce, even though they apply to cars engaged in interstate commerce; and this for the reason that though remotely and indirectly affecting, they do not interfere with nor molest interstate commerce. State statutes have been enforced in this court and held valid, which indirectly affect interstate commerce, in the following cases:

State "full crew" law.

Pittsburg, etc., Co., v. State, 223 U. S. 713.

State attachment law.

Davis v. Cleveland, etc., Co., 217 U. S. 157.

State statute requiring locomotive engineers to be examined and licensed.

Smith v. Alabama, 124 U. S. 465.

State statutes making it unlawful to run freight trains on Sunday.

Hennington v. State of Georgia, 163 U. S. 299.

Heating car statutes.

New York, etc., Co., v. New York, 165 U. S. 628.

Automatic couplers required.

Voelker v. Chicago, etc., Co., 116 Fed. 867;
Johnson v. Southern Pac. Co., 196 U. S. 1.

Statutes governing transfer of cars.

Missouri Pac. v. Larabee Co., 211 U. S. 612.

Transmitting messages.

Western Union T. Co., v. James, 162 U. S. 650.

Adjusting freight rates under state statutes.

Atlantic v. Mazursley, 216 U. S. 121.

Enforced separation of whites and blacks.

New Orleans, etc., Co., v. Mississippi, 133 U. S. 587.

Requiring fences and cattle guards.

Minneapolis v. Emmonds, 149 U. S. 364.

Shipping diseased meats into states.

Missouri, etc., Co., v. Haber, 169 U. S. 613.

State headlight law.

Atlantic Coast Line v. State of Georgia, 234 U. S. 280.

PRESUMPTION IN FAVOR OF THE STATE STATUTE.

"Courts always presume that a legislature in enacting statutes acts advisedly and with full knowledge of the situation, * * * and they must accept its action as that of a body having full power to act, and only acting when it has acquired sufficient information to justify its action."

Chesapeake, etc. v. Manning, 186 U. S. 238.

THERE IS NO PRESUMPTION THAT CONGRESS INTENDED TO SUPERSEDE THE STATE.

"But the intent to supersede the exercise by the State of its police power as to matters not covered by federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted is in actual conflict with the laws of the State. This principle has had abundant illustration." (Citing cases).

Savage v. Jones, 225 U. S. 501-533.

"It should never be held that Congress intends to supersede or by its legislation suspend the exercise of police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that in the application of this principle of supremacy of an act of Congress, in a case where the state law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.

Reid v. Colorado, 187 U. S. 137-148.

The only cases which decide the exact question now before this Court, were decided by the Supreme Courts of Ohio and Indiana in Detroit, etc., Co., v.

State, 91 N. E. 869, and Southern Railway Co., v. Railroad Commission of Indiana, 100 N. E. 337.

In each of these cases the state Supreme Court affirmed the judgment below for the following reasons:

(a) The state act was not in conflict with, nor an interference with, interstate commerce.

(b) The state act was passed by the legislature in the exercise of the police power of the State.

(c) The state act could be enforced if it did not interfere with nor undertake to control interstate commerce.

(d) A railroad company may at the same time be engaged in both interstate commerce and commerce within the State, and be answerable to the laws of each jurisdiction.

Congress having only such authority and jurisdiction as is given to it by the States, can exercise only such authority, while the States have all power and authority, except those surrendered.

Having surrendered to Congress, through the commerce clause of the Constitution, the right to regulate commerce between the States, the States have rendered themselves powerless to pass or enforce any act which interferes with the exercise of the powers surrendered; but the States are in no way prevented from enforcing any act which does not have this effect and which is passed in the exercise of the police powers of the States reserved to them.

Congress cannot interfere with the right of the State to enforce statutes which it has a right to en-

force, and when Congress undertakes to transgress upon this right and interfere with the authority of the States, to that extent its statutes are invalid and unenforcible.

This last proposition was decided by this court in the case of Howard v. Illinois Central Ry. Co., 207 U. S. 463, where it was held that the Federal Employers' Liability Act of June 11, 1906, was unconstitutional for the reason that the act in terms did not limit the liability for injury to those at the time engaged in interstate commerce.

In conclusion, the defendant in error most earnestly insists that the state statute in question is constitutional and enforcible for the following reasons:

(1) It is not an interference with interstate commerce.

(2) It is not in contravention of nor in conflict with the federal statute.

(3) It is a valid and reasonable exercise of the police power of the State.

(4) It is in aid of the federal statute.

(5) It was passed to promote the same object and to bring about the same results sought by the federal statute.

(6) The plaintiff in error at the time in question was engaged in both interstate and intrastate commerce, and was therefore, answerable to the statutes of each jurisdiction.

(7) The same act of, or violation by, the plaintiff in error may be an offense against both the federal and state statutes, and punishable by each jurisdiction. While engaged in intrastate commerce, the plaintiff in error

cannot escape its liability under the state statute by attaching the car engaged in such commerce to cars loaded with interstate traffic.

(8) There is nothing in the federal statute to indicate that the police power of the State should be suspended.

(9) The purpose and desire of the courts are that all statutes should be so construed as to be enforcible, and not rendered void; and this construction will be adopted if the statute is open to such construction.

(10) The presumption is that the state legislature had full power and authority to pass the act in question, and did so advisedly.

(11) The exercise of the police power of the State will not be deemed superseded, unless the two acts are so inconsistent that they both cannot stand and be enforced.

(12) The car attacked by the state statute was not included nor covered by the federal statute of 1893, nor by the amendments thereof of 1896 and 1903.

The defendant in error, therefore, prays that the judgment and action of the Supreme Court of the State of Indiana be, by this Honorable Court, in all things affirmed.

All of which is most respectfully submitted,

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two sovereignties so that punishment by one does not prevent punishment by the other, only relates to cases where both sovereignties have jurisdiction over the act. It has no application where one of the governments has exclusive jurisdiction of the subject-matter and therefore has the exclusive power to punish.

Under the Federal Constitution the power of Congress to regulate interstate commerce is such that when exercised it is exclusive and *ipso facto* supersedes existing state legislation on the same subject.

Congress may so circumscribe its regulations in regard to a matter within its exclusive jurisdiction as to occupy only a limited field and leave a part of the subject open to incidental legislation by the States; but the Safety Appliance Act extended to the whole subject of equipping cars with safety appliances to the exclusion of further action by the States.

The Indiana statute requiring railway companies to place grab-irons and hand-holds on the sides and ends of every car having been superseded by the Federal Safety Appliance Act, penalties imposed by the former cannot be recovered as to cars operated on interstate railroads although engaged only in intrastate traffic.

THE facts, which involve the effect of the Federal Safety Appliance Act on state statutes relating to safety appliances on railroad cars used in interstate commerce, are stated in the opinion.

Mr. John D. Welman, with whom *Mr. Alexander P. Humphrey* and *Mr. Edward P. Humphrey* were on the brief, for plaintiff in error.

Mr. Frank H. Hatfield, with whom *Mr. John R. Brill*, *Mr. John W. Brady* and *Mr. Thomas W. Littlepage* were on the brief, for defendant in error:

Congress has such power as has been delegated to it by the States and all power not granted by the States is reserved to the States.

If the state statute is not a regulation of interstate commerce, it is not in contravention of or opposed to the right of Congress and therefore not in violation of the commerce clause. *Smith* v. *Alabama*, 124 U. S. 465; *Hennington* v.

Georgia, 163 U. S. 299; *Gibbons* v. *Ogden*, 9 Wheat. 1; *People* v. *Chicago &c. R. R.*, 79 N. E. Rep. 144.

The state statute in question was passed in the exercise of the police power of the State.

A statute of a State and an act of Congress on the same subject may be enforced in pursuance of a common purpose to afford a remedy. *Voelker* v. *Chicago &c. R. R.*, 116 Fed. Rep. 867–873.

If a railroad company is engaged in both interstate and intrastate commerce, this does not prevent the State from adopting such regulations as it may deem proper to provide for the safety of its citizens. *People* v. *Chicago &c. R. R.*, 220 Illinois, 581; *People* v. *Erie R. R.*, 198 N. Y. 369; *Missouri &c. R. R.* v. *Haber*, 169 U. S. 613; *Reid* v. *Colorado*, 187 U. S. 137; 2 Elliott on Railroads, 690; 4 *Id.* 1671; *Missouri &c. R. R.*, v. *Kansas*, 216 U. S. 262; and see as to an Ohio statute identical with the one here involved, *Detroit &c. Co.* v. *State*, 91 N. E. Rep. 869.

The state statute in question has not been superseded. When Congress acts the state laws are superseded only to the extent that they affect commerce outside of the State as it comes within the State. *Hall* v. *DeCuir*, 95 U. S. 485; *Reid* v. *Colorado*, 187 U. S. 137; *N. Y. &c. R. R.* v. *New York*, 165 U. S. 628; *Morgan Steamship Co.* v. *Louisiana*, 118 U. S. 455; *Compagnie &c. Co.* v. *State Board*, 186 U. S. 380; *Barbier* v. *Connolly*, 113 U. S. 27.

The state statute is not invalid unless it is repugnant to the act of Congress. *Lake Shore R. R.* v. *Ohio*, 173 U. S. 285; *Pittsburg &c. R. R.* v. *State*, 172 Indiana, 147; *Chicago &c. R. R.* v. *Solan*, 169 U. S. 133; *Missouri &c. R. R.* v. *Haber*, 169 U. S. 613.

A state statute is not invalid because of a Federal statute on the same subject, unless the state statute is repugnant to the Federal statute. *People* v. *Erie R. R.*, 198 N. Y. 369; *Gulf &c. R. R.* v. *Hefley*, 158 U. S. 98; *Hennington* v. *Georgia*, 163 U. S. 299; *New Orleans &c.*

R. R. v. *Mississippi*, 133 U. S. 587; *Minneapolis &c. R. R.* v. *Emmonds*, 149 U. S. 364.

In order that a state law or the action of state authorities under such law should be construed a regulation of commerce between the States, the operation of such law or the action of such state authorities must be a direct interference or regulation and directly or substantially hurtful to such commerce, not a mere incidental or casual interruption or regulation or remotely hurtful. *Sherlock* v. *Alling*, 93 U. S. 99; *Louis. & Nash. R. R.* v. *Kentucky*, 183 U. S. 503; *New York &c. R. R.* v. *Pennsylvania*, 158 U. S. 431; *Henderson Bridge Co.* v. *Kentucky*, 166 U. S. 150; *Louis. & Nash. R. R.* v. *Kentucky*, 161 U. S. 677; *Nashville &c. R. R.* v. *Alabama*, 128 U. S. 96; *Davis* v. *Cleveland &c. R. R.*, 217 U. S. 157.

So long as the action of the State is not repugnant to or does not interfere with, or place burdens upon, or undertake to regulate, interstate commerce, or is a mere police regulation, its action, though in aid of interstate commerce, is not invalid, unless it is a direct interference. *Savage* v. *Jones*, 225 U. S. 501; *Standard &c. Co.* v. *Wright*, 225 U. S. 540; *United States* v. *Minneapolis*, 223 U. S. 335; *Meyer* v. *Wells*, 223 U. S. 298; *Atchison &c. R. R.* v. *O'Connor*, 223 U. S. 280; *Gladson* v. *Minnesota*, 166 U. S. 427; *Louisville &c. R. R.* v. *Mississippi*, 133 U. S. 587; *Mobile County* v. *Kimball*, 102 U. S. 691.

It is not enough to render the state law invalid simply that it is similar to the Federal statute. *United States* v. *DeWitt*, 9 Wall. 41; *Slaughterhouse Cases*, 16 Wall. 36; *United States* v. *Reese*, 92 U. S. 214; *Patterson* v. *Kentucky*, 97 U. S. 501; *Sherlock* v. *Alling*, 93 U. S. 99; *New York &c. Co.* v. *Pennsylvania*, 158 U. S. 431.

Where both the State and Congress have made certain acts a violation of the criminal law, the commission of the act may be an offense against, or transgression of, the laws of both, and may be punished in both jurisdictions.

Dashing v. *State*, 78 Indiana, 357; *Snoddy* v. *Howard*, 51 Indiana, 411; *Fox* v. *Ohio*, 5 How. 410; *Moore* v. *People*, 14 How. 13; 11 Cyc. 311.

The same act may be an offense against the laws of two different jurisdictions and may be punished in each. *Ambrose* v. *State*, 6 Indiana, 351; *State* v. *Gapin*, 17 Ind. App. 524.

For cases holding that one act may constitute an offense against both the state and Federal Government and that both may punish, see *Ex parte Siebold*, 100 U. S. 371–389; *Cross* v. *North Carolina*, 132 U. S. 131; *Reid* v. *Colorado*, 187 U. S. 137; *Detroit &c. R. R.* v. *State*, 82 Ohio, 60.

A statute of the State and an act of Congress on the same subject may be enforced in pursuance of a common purpose to afford a remedy. *Voelker* v. *Chicago &c. R. R.*, *supra*; *Southern Railway* v. *Railroad Commission*, 100 N. E. Rep. 337–341; *In re Loney*, 134 U. S. 372; *State* v. *Kirkpatrick*, 32 Arkansas, 117; *People* v. *McDonnell*, 80 California, 285; *United States* v. *Amy*, 14 Maryland, 152; *State* v. *Olesen*, 26 Minnesota, 507; *State* v. *Whittemore*, 50 N. H. 245; *People* v. *Welch*, 141 N. Y. 266; *Territory* v. *Coleman*, 1 Oregon, 191; *State* v. *Norman*, 16 Utah, 457; *Smith* v. *United States*, 1 Wash. T. 262; *People* v. *White*, 34 California, 183; *Martin* v. *State*, 18 Tex. App. 225; *State* v. *Bordwell*, 72 Mississippi, 541; *Bohannon* v. *State*, 18 Nebraska, 57; *In re Trueman*, 44 Missouri, 183; *Smith* v. *Maryland*, 18 How. 71; *Commonwealth* v. *Ellis*, 158 Massachusetts, 555; *People* v. *Miller*, 38 Hun, 82.

The state statute in question is in aid of the Federal Act. *Charles* v. *Atlantic Coast Line*, 78 S. Car. 36; *Seegers Bros.* v. *Seaboard Air Line*, 73 S. Car. 71.

For cases holding that state statutes may be enforced as a valid exercise of the police power of the State when they do no more than to remotely and indirectly control the instrumentalities of interstate commerce, see state "full crew" law. *Pittsburg &c. R. R.* v. *State*, 223 U. S. 713;

SOUTHERN RAILWAY COMPANY *v.* RAILROAD COMMISSION OF INDIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

No. 107. Argued December 9, 1914.—Decided February 23, 1915.

If the car is moving on a railroad engaged in interstate commerce it is subject to the provisions and penalties of the Safety Appliance Act, although engaged at the time in intrastate commerce. *United States* v. *Southern Ry.*, 222 U. S. 20.

The principle that an act may constitute a criminal offense against

state attachment law, *Davis* v. *Cleveland &c. R. R.*, 217 U. S. 157; state statute requiring locomotive engineers to be examined and licensed, *Smith* v. *Alabama*, 124 U. S. 465; state statutes making it unlawful to run freight trains on Sunday, *Hennington* v. *Georgia*, 163 U. S. 299; heating car statutes, *New York &c. R. R.* v. *New York*, 165 U. S. 628; automatic couplers required, *Voelker* v. *Chicago &c. R. R.*, 116 Fed. Rep. 867; *Johnson* v. *Southern Pac. Co.*, 196 U. S. 1; statutes governing transfer of cars, *Mo. Pac. Ry.* v. *Larabee Co.*, 211 U. S. 612; transmitting messages, *West Un. Tel. Co.* v. *James*, 162 U. S. 650; adjusting freight rates under state statutes, *Atlantic Coast Line R. R.* v. *Mazursky*, 216 U. S. 122; enforcing separation of whites and blacks, *New Orleans &c. R. R.* v. *Mississippi*, 133 U. S. 587; requiring fences and cattle guards, *Minneapolis* v. *Emmonds*, 149 U. S. 364; shipping diseased meats into States, *Missouri &c. R. R.* v. *Haber*, 169 U. S. 613; state headlight law, *Atlantic Coast Line* v. *Georgia*, 234 U. S. 280.

There is a presumption in favor of the state statute. *Chesapeake &c. R. R.* v. *Manning*, 186 U. S. 238.

There is no presumption that Congress intended to supersede the State. *Savage* v. *Jones*, 225 U. S. 501–533; *Reid* v. *Colorado*, 187 U. S. 137, 148; *Detroit &c. R. R.* v. *State*, 91 N. E. Rep. 869; *Southern Railway* v. *Indiana*, 100 N. E. Rep. 337; *Howard* v. *Ill. Cent. Ry.*, 207 U. S. 463.

MR. JUSTICE LAMAR delivered the opinion of the court.

The Indiana statute requires railway companies to place secure grab-irons and hand-holds on the sides or ends of every railroad car, under a penalty of $100 fine to be recovered in a civil action.

In March, 1910, the Railroad Commission of the State brought such a suit against the Southern Railway Company, alleging that the Company on February 24, 1910, had transported from Boonville, Indiana, to Milltown,

Indiana, a car which did not have the required equipment. The defendant filed an answer in which it denied liability under the state law inasmuch as on February 24, 1910, the Federal Safety Appliance Act imposed penalties for failing to equip cars with hand-holds and also designated the court in which they might be recovered. The Commission's demurrer to the answer was sustained. The defendant refusing to plead further, judgment was entered against the Company. That judgment was affirmed by the state court and the case was brought here by writ of error.

The car alleged to have been without the required equipment, though transporting freight between points wholly within the State of Indiana, was moving on a railroad engaged in interstate commerce and the Company was, therefore, subject to the provisions and penalties of the Safety Appliance Act. 27 Stat. 531, § 4. *Southern Railway* v. *United States*, 222 U. S. 20.

The defendant in error insists, however, that the Railroad Company was also liable for the penalty imposed by the Indiana statute. In support of this position numerous cases are cited which, like *Cross* v. *North Carolina*, 132 U. S. 131, hold that the same act may constitute a criminal offense against two sovereignties, and that punishment by one does not prevent punishment by the other. That doctrine is thoroughly established. But, upon an analysis of the principle on which it is founded, it will be found to relate only to cases where the act sought to be punished is one over which both sovereignties have jurisdiction. This concurrent jurisdiction may be either because the nature of the act is such that at the same time it produces effects respectively within the sphere of state and Federal regulation and thus violates the laws of both; or, where there is this double effect in a matter of which one can exercise control but an authoritative declaration that the paramount jurisdiction of one shall not

exclude that of the other. Compare, R. S., § 711; 37 Stat. 670.

But the principle that the offender may, for one act, be prosecuted in two jurisdictions has no application where one of the governments has exclusive jurisdiction of the subject-matter and therefore the exclusive power to punish. Such is the case here where Congress, in the exercise of its power to regulate interstate commerce, has legislated as to the appliances with which certain instrumentalities of that commerce must be furnished in order to secure the safety of employés. Until Congress entered that field the States could legislate as to equipment in such manner as to incidentally affect without burdening interstate commerce. But Congress could pass the Safety Appliance Act only because of the fact that the equipment of cars moving on interstate roads was a regulation of interstate commerce. Under the Constitution the nature of that power is such that when exercised it is exclusive, and *ipso facto*, supersedes existing state legislation on the same subject. Congress of course could have "circumscribed its regulations" so as to occupy a limited field. *Savage* v. *Jones*, 225 U. S. 501, 533. *Atlantic Line* v. *Georgia*, 234 U. S. 280, 293. But so far as it did legislate, the exclusive effect of the Safety Appliance Act did not relate merely to details of the statute and the penalties it imposed, but extended to the whole subject of equipping cars with appliances intended for the protection of employés. The States thereafter could not legislate so as to require greater or less or different equipment; nor could they punish by imposing greater or less or different penalties. For, as said in *Prigg* v. *Commonwealth of Pennsylvania*, 16 Pet. 539, 617: "If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; and, as

it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject-matter. Its silence as to what it does not do, is as expressive of what its intention is as the direct provisions made by it . . . the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed."

Without, therefore, discussing the many cases sustaining the right of the States to legislate on subjects which, while not burdening, may yet incidentally affect interstate commerce, it is sufficient here to say that Congress has so far occupied the field of legislation relating to the equipment of freight cars with safety appliances as to supersede existing and prevent further legislation on that subject. The principle is too well established to require argument. Its application may be seen in rulings in the closely analogous cases relating to state penalties for failing to furnish cars and to state penalties for retaining employés at work on cars beyond the time allowed by the Hours-of-Service Law.

In *St. L., Iron Mt. & S. Ry.* v. *Hampton*, 227 U. S. 267, it was held that the Arkansas statute imposing a penalty for failing to deliver cars had been superseded by the provisions of the Hepburn Act, although the provisions of the two statutes were not identical. In *Northern Pacific Ry.* v. *Washington*, 222 U. S. 371, it was held that congressional legislation as to hours-of-service so completely occupied the field as to prevent state legislation on that subject. In *Erie R. R.* v. *New York*, 233 U. S. 671, a like ruling was made in a case where the New York law punished a Railroad Company for allowing an employé to work more than eight hours when the Federal statute

punished the Company for employing him for more than nine hours—even though it was argued that the state legislation was not in conflict with the Federal act, but rather in aid of it. The same contention is made here inasmuch as the Indiana law requires hand-holds on sides *or* ends of cars, while the Federal statute requires hand-holds to be placed both on the sides *and* ends of cars.

The test, however, is not whether the state legislation is in conflict with the details of the Federal law or supplements it, but whether the State had any jurisdiction of a subject over which Congress had exerted its exclusive control. The Safety Appliance Act having superseded the Indiana statute the judgment imposing the penalty must be reversed, and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.